Appeal Docketed May 15, 2003
Probable Jurisdiction Noted June 5, 2003

(14) No. 02-1674 *et al.*

AUG 15 2003
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

MITCH MCCONNELL *et al.*,

Appellants,

v.

FEDERAL ELECTION COMMISSION *et al.*,

Appellees.

On Appeal From The United States District Court For The District of Columbia

JOINT APPENDIX

VOLUME I (Pages 1 to 464)

FLOYD ABRAMS
SUSAN BUCKLEY
BRIAN MARKLEY
CAHILL GORDON & REINDEL LLP
80 Pine Street
New York, NY 10005
(212) 701-3000

KENNETH W. STARR
Counsel of Record
EDWARD W. WARREN
KANNON K. SHANMUGAM
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 879-5000

(*additional counsel on inside cover*)

August 2003

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

KATHLEEN M. SULLIVAN
559 Nathan Abbott Way
Stanford, CA 94305
(650) 725-9875

JAN WITOLD BARAN
THOMAS W. KIRBY
LEE E. GOODMAN
WILEY, REIN & FIELDING LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7000

VALLE SIMMS DUTCHER
L. LYNN HOGUE
SOUTHEASTERN LEGAL FOUNDATION, INC.
3340 Peachtree Road, N.E.
Suite 3515
Atlanta, GA 30326
(404) 365-8500

G. HUNTER BATES
Frost Brown Todd LLC
400 West Market Street, Suite 3200
Louisville, KY 40202-3363
(502) 568-0222

Counsel in No. 02-1674

TABLE OF CONTENTS

VOLUME I

Declarations & Affidavits

Andrews, Wright 1

Ayres, Q. Whitfield 9

Ayres, Q. Whitfield - Rebuttal 17

Bailey, Douglas 24

Banning, Jay 30

Bloom, Elaine 47
- Exh. 3 56
- Exh. 4 68
- Exh. 5 73
- Exh. 6 93
- Exh. 7 97

Boos, Michael (p. 4-13) 102

Bowler, Kathleen 114

Bowler, Kathleen – Rebuttal 160

Brock, William E. 169

Bumpers, Dale 172

Dasbach, Stephen et al 181

Duncan, Robert 203

Echols, Emily 212

Echols, Tim 217

Erwin, Ryan.....223

Fowler, Donald.....261

Gallagher, Mary Jane 265

Greenwald, Gerald.....281

Huard, Paul (pp. 1-2).....285

Josefiak, Thomas.....289

Josefiak Rebuttal 322

Josten, R. Bruce (pp. 1-3).....327

Keating, David (11).....333

Knopp, Janice L.....334

Kolb, Charles E.M. (Exh. 6).....348

LaPierre, Wayne (NRA App. 1-26).....364

McCain, John.....389

McConnell, Mitch 401

McDow, Donna 406

McDow, Hanna 408

McDow, Isaac.....412

McQueen, Angus (NRA App. 35-40) 416

Mitchell, Denise 423

VOLUME II

Denise Mitchell, Exh. 1 464

Mitchell, Jessica 582

Mitchell, Pamela.....588

Monroe, Edward (pp.1-3).....591

Morgan, Timothy.....595

Murphy, Laura 608
Exh. A.....615
Exh. B.....618
Exh. C.....620

O'Steen, David N. 628

Pence, Michael 662

Pennington, Rocky 668
Exh. 4.....678
Exh. 5.....685

Peschong, John 693

Pratt, Lawrence (19-22).....702

Pryor, William H. 705

Randlett, Wade 712

Romero, Anthony 718

Rosenthal, Steven 723
Exh. 4 737
Exh. 10 738

Rudman, Warren 740

Sandherr, Stephen.....747

Shays, Christopher (NRA App. 101).....749

Shea, Beverly.....750

Shea, Gerald 773
Exh. 31.....800

Simon, Paul 802

Simpson, Alan K. 808

Smith, Curt 813

Solid, Bonnie.....817

Solid, Daniel.....819

Stoltz, Gail.....823

White, Cynthia.....829

White, Zachary 831

Depositions

Andrews - 16-35.....836
49-50.....846
59-69.....846

Feingold - 41 852
132-33.....853
189.....854
243 856

260.....857
264-65.....858

Goldstein - 182.....860

Green Cross-x - 24.....861
58-61.....861
69-72.....864
142.....867
148-49.....868
158.....870
Ex. 12 871

Herrnson - 208-09.....877

Hiatt - 102.....878
104.....878

Hickmott - 9-27.....880

Hilliard - 68.....890
86.....891
88.....891
90.....892
95.....893
103.....894

Holman - 42-43.....895
73.....896
77-78.....896

Huard - 86-87.....899
90.....901

Jeffords - 6-29.....902
75-77.....914

	83-85	916
	106-07	918
Josten -	175-76	920
~~La~~Pierre	Exh. 3 (¶¶ 1-11, 17, 27-33, 47-52, Signature)	922
Lupia -	17	926
Mann Cross-x -	148-49	927
	164-65	928
McCain -	15-16	930
	89	931
	94-101	933
	121-27	936
	139	941
	141	942
	192-93	943
	205-15	944
	223	952

VOLUME III

McConnell -	12-19	953
McLoughlin -	23	959
McQueen -	113-30	960
Meehan -	51-54	971
	124	973
	128	974
	171-72	974
	218-19	975
Oliver -	46-57	977
	106	985

Seltz -	187	986
Shapiro Cross-x -	114-17	987
Shays -	40-43	991
	111	994
	128	995
Shays Cross-x -	10-21	996
	65	1005
Shields -	58-63	1007
Simpson -	11-16	1010
	22-31	1013
	39-43	1019
	50-53	1022
Snowe -	159-60	1025
	205-08	1026
	231-32	1028
Strother -	18-20	1031
	39-40	1032
	139-148	1032
	223-24	1037
Strother Cross-x -	38-39	1038
Thompson -	68	1039
	87	1040
Williams Cross-x -	21-22	1041
	56-59	1042

Expert Reports

Gibson (1 PCS/ ER 1-66)		1046

Gibson Rebuttal (2 PCS/ ER 794-821).....1115

Gibson Supplemental (2 PCS/ ER 831-37).....1144

Goldstein 1150

Green 1188

Green Rebuttal 1235

Keller.....1241

Krasno & Sorauf.....1272

VOLUME IV

La Raja 1406

La Raja Rebuttal.....1459

Lott 1473

Magleby - 1, 5-6, 10, 18-23, 26-33, 35-45 1476

Mann -1-26.....1534

Mann Declaration.....1561

Mellman/ Wirthlin - 1, 5-12 1563

Milkis.....1572

Milkis Rebuttal.....1610

Snyder.....1623

Pleadings and Orders

4/24/2002 - Order (Docket #24).....1655

4/24/2002 - Order (Docket #25).....1659

5/13/2002 - Order (Docket #49).....1661

6/17/2002 – Responses and Objections of Defendant FEC to First Interrogatories by the Echols Plaintiffs.....1665

6/17/2002 – Response and Objections of the Attorney General to the Echols' Plaintiffs' First Set of Interrogatories 1675

7/26/2002 - Order (Docket #113).....1691

9/5/2002 – Intervenors' Responses to Plaintiffs California Democratic Party and California Republican Party's First Set of Requests for Admissions, Interrogatory, and Request for Production of Documents.....1694

9/16/2002 - FEC Response to Requests for Admissions Nos. 1, 2, 23, 24, 101-13 1732

9/16/2002 - Intervenors' Responses to Contention Interrogatories (Adams Exh. 15).....1736

9/16/2002 – Objections and Responses of Defendant FEC to the First Requests for Admission by Plaintiff Emily Echols, et al. 1752

9/16/2002 – Responses of Defendant United States to Plaintiffs' Requests to Admit, Supplemental Interrogatory and Request to Produce to All Defendants.....1775

9/19/2002 - US Response to RNC's 2nd Set of Interrogatories to Defendants, at 4 1800

10/15/2002 - Order (Docket #175).....1802

11/15/2002 - Order (Docket #218).....1807

11/26/2002 - Order (Docket #239).....1809

5/9/2003 ACLU Motion for Stay 1812

5/9/2003 Declaration of Anthony Romero in Support of ACLU Motion for Stay.....1816

VOLUME V

Other Documents

FEC, Twenty Year Report, Ch. 3, p. 4 (April 1995).....1820

Statement of Commissioner B. Smith in FEC MUR 4624 (Nov. 6, 2001) 1822

Echols Exhibits 30-39 (FEC Annual Reports 1992 – 2000).....1868

RNC Exhibit 1 1878
RNC Exhibit 232.....1926
RNC Exhibit 292.....1929

T. Edsall & D. VonDrehle, *Republicans Have Huge Edge in Campaign Cash,* Wash. Post, Feb. 14, 2003 1931

T. Edsall, *Liberals Meeting to Set '04 Strategy; Labor, Rights Groups Focus on Getting Out the Vote to Help Democrats*, Wash. Post, May 25, 2003 1938

H. Meyerson, *Union Dos and Don'ts For the Democrats*, Wash. Post, May 28, 2003.....1942

BNA, Money & Politics Report (June 24, 2003) 1946

NRA Bylaws (NRA App 106).....1948

NRA Fundraising Materials (NRA App. 133-36).....1950

Annenberg Center Study - 7 (NRA App. 197), 27-28....1957

Summary of NRA's Gross Revenues.....1963

Summary of Returns on NRA Infomercials (NRA App. 199).....1964

Summary of Airings of NRA Infomercials from Jan. - Dec. 2000)(NRA App. 107).....1965

Summary of "Airings" of California News Magazine (NRA App. 216).....1966

Intervenors' Comments to FEC re "Electioneering Communications" - 3, 10-11 (NRA App. 209-10).....1967

Storyboards of Political Ads Attacking NRA (NRA App. 226-232) 1969

L. de Moraes, *Political "Reality": Viewers to Pick 2004 Candidate*, Wash. Post, 9/21/02 (NRA App. 343-45)....1982

Internet Doubles Claim New Survey Fraud Warnings Made, Internet Bus. News, 7/1/98 (NRA App. 352).....1987

The Pew Research Center, *Internet Sapping a Broadcast News Audience*, 6/11/02 (NRA App. 444-45).....1989

T. Putnam, *The G.E. Boycott: A Story NBC Wouldn't Buy*, Extra!, Jan./Feb. 1991 (NRA App. 687-89) 1993

C. Lewis, *Media Money: How Corporate Spending Blocked Ad Reform and Other Stores of Influence*, Columbia Journalism Review (NRA App. 697-97).....1997

The Pew Research Center for the People and the Press, *Self Censorship: How Often and Why*, Apr. 30, 2000 (NRA App. 862-864) 2000

Transcript of "Brady Bill" (NRA App. 885).....2005

Transcript of "Crime Bill" (NRA App. 886-88) 2006

Transcript of "California" (NRA App. 892-904).....2010

Transcript of President Clinton Appearance on Today Show (NRA App. 905-10).....2034

Transcript of "It Can't Happen Here" 2046

Transcript of "MMM Prosecution" 2070

Transcript of "Tribute" (NRA App. 943-47).....2086

Summary of NRA News Magazines 2096

Transcript of "The Truth About Prosecution" (NRA App. 978-84) 2102

NRA News Magazine Budget Recap 2115

Adams Exh. 6 :Memoranda from Bush Pioneer Thomas R. Kuhn 2116

Adams, Exh 34: Jim Abrams, *Senate Takes Up Rival to McCain-Feingold Spending Limits*, AP Mar. 27, 2001 2121

MMc 0095 2125

Huard Deposition Exhibit 4.....2127

Huard Deposition Exhibit 18.....2131

VOLUME VI

DOCUMENTS UNDER SEAL

Strother Declaration 2146

Huard Deposition Exhibits
2 2153
6B 2159
7 2166

Mitchell Deposition Exhibits
6 2169
7 2172
9 (pp. AFL 1582-86) 2174
10 2178

[HIGHLY CONFIDENTIAL – COUNSEL ONLY]

DECLARATION OF WRIGHT H. ANDREWS

[DEV Vol. 6, Tab 1]

1. My name is Wright H. Andrews, Jr. I am an attorney and lobbyist at the Washington, D.C. firm of Butera & Andrews, specializing in government relations and federal legislative representations. I have been an active lobbyist before Congress since 1975. Prior to that time, I served as Chief Legislative Assistant to then United States Senator Sam Nunn (D-GA). Prior to forming Butera & Andrews, I worked in the government relations practice at the Washington office of the law firm of Sutherland, Asbill & Brennan. During my career, I have represented clients from throughout the nation and abroad, and they have included major corporations, trade associations, coalitions, and state governmental entities. I have worked with clients on a broad array of issues including environmental matters, federal taxation, banking, financial services, housing, and many others. I have served two terms as President of the American League of Lobbyists, and *Washingtonian* magazine named me as of "Washington's Top 50 Lobbyists." All matters attested to in this declaration are based on my personal beliefs and knowledge or information that I have acquired during the course of my lobbying career.

2. In the years I have been in this business, I have seen our federal campaign finance [2] system and its effect on the legislative process change dramatically -- and not for the better. Federal lobbyists, the interests we represent, and legislators increasingly operate in a legislative environment that is far too dominated by the campaign finance process, and its excesses are like a cancer eating away at our democratic system.

3. I am not an ivory-tower liberal, nor do I naively believe we can or should seek to end the influence of all money on politics. I have engaged in many activities most reformers abhor, including: (1) making thousands of dollars

in personal political contributions over the years, (2) raising thousands of dollars, including "soft money," for candidates and for both political parties, and (3) counseling clients on how to use their money and "issue ads" legally to influence the legislative and political process. I readily admit that I will continue, and perhaps even expand, my own campaign finance activities -- just as will many of my colleagues -- unless the rules are changed. But in this declaration, I will attempt to begin to illustrate how certain of these practices undermine the democratic process, and at the very least, create in the minds of many citizens the appearance of corruption or improper influence.

4. Broadly described, lobbying is the attempt to influence or sway a public official toward a desired action. Government officials are continuously making public policy decisions that affect the vital interests of individuals, corporations, labor organizations, religious groups, charitable institutions and other interests. In order to make informed policy judgments, public officials need to receive factual information from, and know the views of, affected interests. Interests have a legitimate and constitutionally protected right to advocate their views to public officials and lobbyists help provide information and convey their clients' positions. In doing so they perform an important service and play an integral role in our nation's democratic process.

5. In my experience, however, this type of basic involvement in the legislative process is alone insufficient to be effective in many instances in lobbying endeavors. To have true political clout, the giving and raising of campaign money for candidates and political parties is often critically important. Most federal elected officials have extremely expensive reelection campaigns. The costs of most federal campaigns today is especially high due to the expense of [3] broadcast media advertising, and officials know that they are often likely to face serious reelection risks unless they can raise large sums of money to pay for competitive levels of advertising.

6. It is overly simplistic and inaccurate to say that legislative outcomes are generally "purchased" by campaign contributions or expenditures. But there can be no doubt that political contributions serve at least two important political goals: securing access and building relationships.

7. Large donations often may help gain access to key decision makers, and may help ensure that the positions of a lobbyist's client are at least considered. Those who are able to provide the largest sums of money are often more likely to have more consideration given to their views. Not only does it help provide a foot in the door into a federal elected official's office and a chance to make the donor's pitch, but also it naturally may tend to foster a more sympathetic hearing.

8. Sophisticated political donors – particularly lobbyists, PAC directors, and other political insiders acting on behalf of specific interest groups – are not in the business of dispensing their money purely on ideological or charitable grounds. Rather, these political donors typically are trying to wisely invest their resources to maximize political return. Sophisticated donors do not show up one day with a contribution, hoping for a favorable vote the next day. Instead, they build longer term relationships. The donor seeks to convey to the member that he or she is a friend and a supporter who can be trusted to help the federal elected official when he or she is needed. Presumably, most federal elected officials recognize that continued financial support from the donor often may be contingent upon the donor feeling that he or she has received a fair hearing and some degree of consideration or support.

9. The donor's hope is that when it comes time for the federal elected official to make political decisions, he or she will help those who have supported them if possible. Of course, a candidate for whom one has raised money will not always act as the contributor wants; however, that candidate-turned-elected-official may exercise political discretion in favor of those [4] who have "helped" them often enough to

make the political support worthwhile from the donor's perspective.

10. Together, access and relationships help provide meaningful influence. Academics might refer to this as the "norm of reciprocity." Overly zealous reformers might call it "cozy backroom dealing." But the simple truth is that it is human nature for people to try if possible to help the people who help them; and in politics, help often involves money and exercising political discretion.

11. In Washington, D.C., tens of thousands of men and women now are professional lobbyists and represent virtually every type of interest. Most are honest, hard working and ethical. Many are largely focused on monitoring developments, and they may have little or no direct participation in the campaign finance process. Others are much more active in advocating positions, and many of them are likely to be more involved in campaign finance activities. Many of these lobbyists operate in a relatively narrow circle. They work discreet issues that are handled in specific committees, and they naturally target most of their campaign contribution activities on key members of these relevant committees. But, even for the later group, giving or raising political money, albeit important, typically is but one of numerous activities that they use to gain political influence.

12. The amount of influence that a lobbyist has is often directly correlated to the amount of money that he or she and his or her clients infuse into the political system. Some lobbyists help raise large "soft money" donations and/or host many fundraising events for key legislators. Some simply represent a single client with very deep pockets and can easily reach into large corporate or union funds for "soft money" donations or other allowable expenditures that may influence legislative actions. Those who are most heavily involved in giving and raising campaign finance money are frequently, and not surprisingly, the lobbyists with the most political clout.

13. Often, corporate clients seek their lobbyists' advice concerning how their money is best spent, whether it be by contributing their PAC's hard money directly to candidates, [5] donating soft money to the political parties, or funding independent expenditures such as broadcast "issue ads." Although the answer for each client will depend upon various circumstances, including the goals that client is working to achieve, unregulated expenditures – whether soft money donations to the parties or issue ad campaigns – can sometimes generate far more influence than direct campaign contributions.

14. For example, a properly channeled $100,000 corporate soft money donation to the national Republican or Democratic congressional campaign committees can get the corporate donor more benefit than several smaller hard dollar contributions by that corporation's PAC. Although the donations are technically being made to political party committees, savvy donors are likely to carefully choose which elected officials can take credit for their contributions. If a Committee Chairman or senior member of the House or Senate Leadership calls and asks for a large contribution to his or her party's national House or Senate campaign committee, and the lobbyist's client is able to do so, the key elected official who is credited with bringing in the contribution, and possibly other senior officials, are likely to remember the donation and to recognize that such big donors' interests merit careful consideration. Of course, parties with legislative interests also may give "soft money" to benefit a less senior federal elected official. The official may benefit by having the money go, for example, to his or her state party to be used for election related activity that will nonetheless help the officeholder in his or her campaign. Or, the donation might help fulfill fundraising commitments that the officeholder has made to his or her party or party committee. The official is likely to remember the helpful larger donation and donor.

15. From the perspective of many lobbyists' clients, a large soft money donation funded by the corporate treasury is relatively easy. By contrast, it usually takes a great deal of effort for the corporation to raise $100,000 in "hard money" in smaller, legally limited individual increments.

16. Today, many lobbyists often host a number of fundraisers. This phenomenon started with a few prominent lobbyists, but in recent years it has become very widespread within [6] the lobbying community. Whereas the political parties periodically organize "gala" events in large ballrooms filled with hundreds of donors, lobbyists now often prefer attending smaller events hosted by other lobbyists, with only ten or fifteen people participating, all sitting at a dinner or breakfast table with the invited guest elected official. This type event allows lobbyists a better opportunity to build more personal relationships and to exchange views.

17. Another practice used to secure influence in Washington is for an interest group to run so called "issue ads." "Issue ads" run in close proximity to elections may influence the outcome of the election. Moreover, such ads may influence the elected official who is seeking reelection to come out in support of or opposition to particular legislation due to the response local voters have to the ads. These ads are noticed by the elected officials on whose behalf, or against whom, these ads are run. An effective advertising campaign may have far more effect on a member than a direct campaign contribution or even a large soft money donation to his or her political party that is used for political purposes in his or her district or state. These ads often have the effect of showing an elected official that a lobbyist's particular issue can have consequences at the ballot box. Given how useful "issue ads" can be in creating political clout with candidates, it is laughable to have a system that prohibits corporations and labor unions from giving even a penny to a candidate, but allows them to funnel millions into positive or negative advertising campaigns that

may influence election outcomes and that many candidates are likely to be influenced by.

18. In contrast to large soft money donations and the funding of "issue ads," single, individual "hard money" contributions of $250, $500, or even $1,000, made directly to candidates' campaign funds typically have relatively little impact on the legislative process. Because candidates for Congress regularly raise hundreds of thousands, if not millions, of dollars each election cycle, relatively small individual donations lack the same potential for truly corrupting influence. Even at double or triple current levels, each hard money contribution is a tiny drop in a very large bucket. Putting limits on soft money is likely to create more pressure to give larger individual contributions, but at least those contributions will be capped and will have [7] to come from individuals' own pocketbooks rather than being drawn with ease out of a corporate or union treasury.

19. Overall, today's levels of political contributions and expenditures are undercutting the integrity of our legislative process. There is an ever-increasing and seemingly insatiable bipartisan demand for more contributions, both "hard" and "soft" dollars. The Federal Election Commission has reported that overall Senate and House candidates raised a record $908.3 million during the 1999-2000 election cycle, up 37 percent from the 1997-1998 cycle. The Republican and Democratic parties also raised at least $1.2 billion in hard and soft money, double what they raised in the prior cycle. These numbers are more than statistics reported by a federal bureaucracy. I see the effect of these numbers on a day-to-day basis as elected officials are forced to keep up with the money chase. Today, most legislators have to spend a great deal of time that should be devoted to their legislative duties seeking campaign contributions.

20. Ironically, congressional lobbyists in general are better, more professional, more ethical and represent more diverse interests than in the past. Our elected officials today also are generally honest, hard-working and well-meaning.

But millions of Americans are convinced that lobbyists and the interests we represent are unprincipled "sleaze balls" who, in effect, use great sums of money to bribe a corrupt Congress.

21. Many citizens believe that using money to try to influence decisions is inherently wrong, unethical and unfair. While recognizing citizen's concerns, I disagree; I find little problem with political interests seeking to influence elected officials through legally limited personal contributions and expenditures at moderate levels, provided this is publicly disclosed and not done on a quid-pro-quo basis.

22. Some lobbyists continue to support the present campaign finance system for a variety of reasons, including in some cases because their own abilities to influence decisions, and their economic livelihoods, are far more dependent on using political contributions and expenditures than on the merits of their causes. But some, like me, believe that the restraints on campaign finance contained in the Bipartisan Campaign Reform Act are both allowable, and [8] necessary.

23. Campaign-related contributions and expenditures at today's excessive levels, however, increasingly have a disproportionate influence on certain legislative actions. Unlimited "soft" money donations and "issue ad" spending in particular are making a joke of contribution limits and are allowing some of the wealthiest interests far too much power and influence. The prevailing system, which permitted unlimited soft money contributions, and which was legally permissible until the latest federal campaign law reforms, has provided the opportunity for a small number of very wealthy individuals, corporations, and labor unions to gain what I consider undue access and political influence.

DECLARATION OF Q. WHITFIELD AYRES

1. My name is Q. Whitfield Ayres. I am the President of Ayres, McHenry & Associates, Inc., a national public opinion and public affairs research firm in Roswell, Georgia.

I. QUALIFICATIONS

2. I hold a Ph.D. and a Masters degree in political science from The University of North Carolina at Chapel Hill. I also hold a Bachelor's degree in political science from Davidson College in Davidson, North Carolina. I have taught and published widely on political science, public policy, and public opinion. My academic background is summarized in my resume, attached as Exhibit A, along with a list of publications during the past ten years.

3. I have extensive professional experience in the field of public opinion research and analysis. Eleven years ago I founded my own public opinion research firm, which I continue to run. The firm has provided polling for Georgia Senator Paul Coverdell's upset of Wyche Fowler in 1992 and Tennessee Senator Bill Frist's upset of Jim Sasser in 1994. Other political clients include U.S. Senators Jeff Sessions of Alabama and Strom Thurmond of South Carolina, former South Carolina Governors Carroll Campbell and David Beasley, and the 1996 [*2] Lamar Alexander for President campaign. The Republican National Committee selected the company to conduct its major post-election national survey after the 2000 Presidential election. I have conducted numerous national and statewide polls on public opinion and public policy, as well as moderated focus groups on particular issues. Other aspects of my professional experience, including five years as Senior Executive Assistant for Budget and Policy for Governor Campbell, are summarized in my resume. See Exhibit A. I am being compensated for my

services in connection with this case at the rate of $200 per hour.

II. OPINIONS, REASONS, AND DATA RELIED UPON

4. I have been asked to render an expert opinion on whether the Bipartisan Campaign Reform Act of 2002 (BCRA) will reduce the appearance of corruption in American politics.

5. In reaching my opinion, I have assumed that "corruption" means a "quid pro quo: dollars for political favors," FEC v. National Conservative Political Action Comm., 470 U.S. 480, 497 (1985), although surveys that include the words "corrupt" or "corruption" in their questions rarely define the term at all, let alone as the Supreme Court has.

6. I have reviewed data on campaign finance from the Roper Center for Public Opinion Research, one of the most widely respected repositories for publicly-available public opinion data, the Poll Track database compiled by National Journal, an extensive on-line repository of data published in The Hotline, as well as historical data available from The Gallup Organization, the Pew Research Center at Princeton University, and the NBC/Wall Street Journal polls. The data do not support the contention that the BCRA will reduce the appearance of corruption in American politics. I have reached that conclusion for several reasons.

7. In American democracy, public opinion sets the range of acceptable policy alternatives that policy makers can consider, much like a stream bed controls the width and [*3] direction of a stream. Within the range of acceptable alternatives, or within the banks of the stream, elites and public officials determine the particular policy. See V.O. Key, Jr., Public Opinion and American Democracy, 1967.

a. On a few issues, the range of acceptable policy alternatives—the width of the stream—is very narrow. On these issues public opinion is deep and well informed. The essence of the public's view is: "I have heard a lot about it, I've thought about it, and I've reached a pretty firm conclusion about it." Examples of these issues are abortion in a strongly religious conservative district, the impeachment debate surrounding President Clinton, and whether the U.S. should respond militarily to the terrorist attacks on September 11, 2001.

b. On the vast majority of issues, the range of acceptable policy alternatives is very wide. On these issues public opinion is shallow and poorly informed. The essence of the public's view is: "I really don't know what you are talking about, but if you'll ask me a question, I'll give you an answer so I won't seem ignorant." When pollsters ask questions on this type of issue, they are more likely to create rather than measure public opinion. Examples of these types of issues are American foreign policy toward Uzbekistan, the role of the International Monetary Fund in Central America, and changes in campaign finance regulations.

8. Substantial evidence supports the contention that public opinion about campaign finance regulations is shallow and poorly informed.

a. The public is not aware of campaign finance regulations, such as the distinction between hard and soft money. Nor has the public identified a particular campaign practice, such as issue advertisements, or a particular campaign finance practice, such as paying for issue advertisements partly with soft money, as a source of corruption. Indeed, the public is not even aware of practices that are currently illegal: only 4 percent know, for example, that [*4] corporations are not allowed to contribute directly to presidential and congressional candidates' campaigns. See Money and Politics Survey, Princeton Survey Research

Associates, April, 1997. According to that Princeton study that is largely sympathetic to campaign finance reform, "Most Americans know little or nothing about the details of campaign finance. . . Less than one percent of respondents chose the right answer to all five (campaign finance regulation) questions." See Money and Politics Survey, Princeton Survey Research Associates, April, 1997.

9. Consequently, any effort to demonstrate that public opinion regarding corruption in the political process will be altered by changes in campaign finance regulations is inherently suspect. If the public knows nothing about campaign finance regulations as they currently exist, then changing those regulations through the BCRA cannot possibly affect the public's view of corruption in the political system. While public opinion data can be generated on the changes—just as they can on any issue—those data will be so dependent on the information provided and the wording of the question that the result is far more likely to create public opinion than to measure it.

10. As opposed to public opinion about campaign finance laws and regulations, the public does have more stable views about the important issues facing the country, and campaign finance consistently falls at or near the bottom of the list. Indeed, a concerted effort must be made to find a national public policy issue that the American public cares less about than campaign finance reform.

a. For example, in January of 2002, near the height of the BCRA debate, an ABC News/Washington Post survey found that only 40 percent of Americans placed "reforming election campaign finance laws" as a high or highest priority for President Bush and Congress. That placed campaign finance reform dead last on the list, behind "handling the U.S. **[*5]** campaign against terrorism" (90 percent a high or highest priority), "improving the economy" (89 percent), "improving education and the schools" (83

percent), "protecting Social Security" (80 percent), "handling national defense and the military budget" (79 percent), "improving the health care system" (78 percent), "keeping the federal budget balanced" (69 percent), "helping the elderly pay for prescription drugs" (68 percent), and "protecting the environment" (59 percent). Not only does campaign finance reform rank tenth out of ten issues tested, it ranked a distant tenth. The gap between the ninth and tenth issues—19 percentage points between the environment and campaign finance—was greater than the gap between any other two consecutive issues. See ABC News/Washington Post Survey, January 24-27, 2002.

b. That low priority for campaign finance reform has been consistent over time. In 1997 one national survey showed that not one single respondent out of 1,017 named campaign finance reform as the problem they are most concerned about. See Tarrance Group Survey, May 27-29, 1997.

11. Because campaign finance regulations are such a low priority in the public mind, previous changes in campaign finance laws appear to have had no impact whatsoever on trust in government.

a. The "trust in government" question tracked by the University of Michigan Survey Research Center and now asked by the Gallup Organization is the longest running, identically-worded measure of governmental trust in America, with data going back 44 years. As shown in Exhibit B, trust in government was headed down as the first Federal Election Campaign Act (FECA) was passed in 1971, and continued down after its enactment. Trust plunged during the Watergate scandal of 1973-74, and the FECA Amendments passed in 1974 did nothing to arrest the slide. It was not until Ronald Reagan's election in 1980 that trust began **[*6]** to improve. Trust began to decline again during the early 1990s, and reached its nadir in 1994 when disgust

with Congress led to a sea change in party control. Then trust began to climb again during the remainder of the 1990s and the first two years of the new century, during the period of increasing criticism of PACs and soft money that led to passage of BCRA. Indeed, trust in government rose before passage of BCRA to its highest level in three decades. If governmental trust were affected by campaign finance regulations, trust would not have increased at precisely the time when the spotlight was focused on campaign finance but Congress seemed unable to pass reform legislation. Trust in government appears to be completely unaffected by campaign finance regulations, but rather driven by other factors that Americans actually care about, like the state of the economy and the war against terrorism.

12. Despite the upward trend in trust in government, a majority of Americans remain dissatisfied with their government, but concern about the role of money in politics is not the primary source of that dissatisfaction.

a. A 1997 Pew Research Center survey probed the source of Americans' dissatisfaction with their government. At that time, 40 percent were satisfied and 57 percent dissatisfied with their government. When those who were dissatisfied were asked for their reasons, 48 percent of respondents mentioned some aspect of poor governmental performance like gridlock or politicians not keeping promises, 21 percent said some aspect of the budget such as wastefulness or high taxes. Only 9 percent mentioned some aspect of sleaze, the politics of the system itself, or a tendency toward corruption. See Pew Research Center, 1997. Since the specific issue of campaign finance is some subset of this latter category, it is clear that campaign financing is at best a minor reason for dissatisfaction with the way government works.

[*7] 13. Just as past campaign finance reform efforts had no effect on trust in government, the BCRA is unlikely to reduce the appearance of the corruption in American politics,

because few people are aware of the BCRA and, once informed, do not believe it will work.

a. After the U.S. Senate first passed the BCRA in 2001, the Pew Research Center asked Americans "Do you happen to know whether the Senate passed the McCain-Feingold campaign finance reform bill, or did they vote it down?" Only 21 percent said the Senate passed the bill, 15 percent thought the Senate voted it down, and fully two-thirds—64 percent—admitted that they did not know. See Pew Research Center, April 18-22, 2001. In other words, only one out of five adult Americans could even guess the correct answer shortly after the first Senate passage of BCRA.

b. After being informed of the law, from three-fifths to two-thirds of Americans do not believe it will have the intended result. For the past four years, the Gallup Organization has asked: "Some people say major changes to the laws governing campaign finance could succeed in reducing the power of special interests in Washington. Other people say no matter what new laws are passed, special interests will always find a way to maintain their power in Washington. Which comes closer to your view?" In March of 1998, Americans said special interests would maintain their power by a margin of 63 to 31 percent. By October of 2000 that margin had grown to 64 to 28 percent. And by February of 2002, shortly before the BCRA became law, the margin had grown to 67 to 28 percent. See Gallup Poll, March 20-22, 1998, October 6-9, 2000, February 8-10, 2002. In other words, overwhelming majorities of Americans think the BCRA will have no effect on the power of special interests in American government. Given this level of cynicism about the role of special interests, changing campaign [*8] finance regulations through BCRA will not reduce the perception of undue influence by special interests on American politics.

14. In summary, the BCRA will not reduce the appearance of corruption in American politics because:

a. Americans know virtually nothing about campaign finance regulations, such as the distinction between hard and soft money, so their opinions about those regulations are shallow and poorly informed.

b. Americans care so little about campaign finance regulations that they continually place campaign finance reform at the bottom of their list of governmental priorities.

c. Past efforts at campaign finance reform have had no effect on Americans' trust in their government.

d. Americans are dissatisfied with their government, but concern about the role of money in campaigns is at best a minor reason for that dissatisfaction.

e. Overwhelming majorities of Americans do not believe BCRA will reduce the influence of special interests on their government.

I hereby declare under penalty of perjury that the foregoing is true and correct.

s/
Q. Whitfield Ayres

Executed on September 23, 2002

[EXHIBITS OMITTED]

REBUTTAL DECLARATION OF Q. WHITFIELD AYRES

1. I am submitting this rebuttal statement in response to the expert reports of Richard Wirthlin, Mark Mellman, Robert Shapiro, Jonathan Krasno, Frank Sorauf, Donald Green, Thomas Mann, and Derek Bok.

WIRTHLIN-MELLMAN

2. Richard Wirthlin and Mark Mellman conducted a national survey of American adults to assess public opinion about large contributions to political parties. Their principal finding is that the public "believes the views of large contributors to parties improperly influence policy and are given undue weight in determining policy outcomes." This survey drives home the point in my original declaration that the Bipartisan Campaign Reform Act will not reduce the appearance of corruption in American politics.

3. On October 1-3, 2002, our firm conducted a follow-up survey to the Wirthlin-Mellman survey that replicated the methodology in their survey. See Exhibit A. We tested the perception of the new hard money limits for contributions to **[*2]** political parties included in the BCRA. In addition, we re-asked several of the key questions from the Wirthin-Mellman survey, substituting the new hard money limits for contributions to political parties included in the BCRA for the phrase "big contributors" or "large contributors," the phrasing used in the Wirthlin-Mellman survey. We found that:

a. Americans overwhelmingly believe that the BCRA annual contribution limit to political parties of $25,000 per person is viewed as a "large" contribution. 66 percent think that an individual who gave $25,000 to a political party in one year would be making a large contribution, 22 percent think they would be making a

medium contribution, and only 10 percent think they would be making a small contribution.

b. Americans overwhelmingly believe that the BCRA contribution limit to political parties of $50,000 per person over a two-year election cycle is viewed as a "large" contribution. 70 percent think that an individual who gave $50,000 to a political party during a two-year election cycle would be making a large contribution, 21 percent think they would be making a medium contribution, and only 7 percent think they would be making a small contribution.

c. Americans overwhelmingly believe that the BCRA annual contribution limit to political parties of $50,000 for a married couple is viewed as a "large" contribution. 79 percent think that a married couple who gave $50,000 to a political party in one year would be making a large contribution, 15 percent think they would be making a medium contribution, and only 4 percent think they would be making a small contribution.

[*3] d. Americans overwhelmingly believe that the BCRA contribution limit to political parties of $100,000 for a married couple over a two-year election cycle is viewed as a "large" contribution. 88 percent think that a married couple who gave $100,000 to a political party during a two-year election cycle would be making a large contribution, 9 percent think they would be making a medium contribution, and only 2 percent think they would be making a small contribution.

e. Not surprisingly, given the view of most Americans that contributions to political parties allowed under the BCRA are "large," re-asking the Wirthlin-Mellman questions with the BCRA limits yields almost exactly the same conclusions as found in the Wirthlin-Mellman survey.

i. The Wirthlin-Mellman survey found that 71 percent of Americans think that members of Congress sometimes decide how to vote on an issue based on what big contributors to their political party want, even if it's not what most people in their districts want. Our survey found that 71 percent of Americans think that members of Congress sometimes decide how to vote on an issue based on what people who give 25,000 dollars per year to their political party want, even if it's not what most people in their districts want.

ii. The Wirthlin-Mellman survey found that 71 percent of Americans think that members of Congress sometimes decide how to vote on an issue based on what big contributors to their political party want, even if it's not what they think is best for the country. Our survey found that 71 percent of Americans think that members of Congress sometimes decide how to vote on an issue based on what people [*4] who give 25,000 dollars per year to their political party want, even if it's not what they think is best for the country.

iii. The Wirthlin-Mellman survey asked "If an individual, issue group, corporation, or labor union donated $50,000 or more to the political party of a Member of Congress, how likely would a Member of Congress be to give the contributor's opinion special consideration because of the contribution?" They found that 81 percent thought it likely that the Member of Congress would give special consideration to that opinion—41 percent very likely and 41 percent somewhat likely. We asked "If an individual donated 25,000 dollars to the political party of a Member of Congress, how likely would a Member of Congress be to give the contributor's opinion special consideration because of the contribution?" We found that 81 percent thought it likely that the Member of Congress would give special consideration to that opinion—41 percent very likely and 40 percent somewhat likely.

f. In other words, every conclusion that the Wirthlin-Mellman report reached about "large" or "big" contributions and contributors applies with equal force to the new, hard money limits in the BCRA. Wirthlin and Mellman note in their report that "in public opinion research, it is uncommon to have 70 percent or more of the public see an issue the same way. When they do, it indicates an unusually strong agreement on that issue." I agree. The American public shares an unusually strong agreement that the contribution limits to political parties adopted in the BCRA are large contributions, and they view those large contributions in precisely the ways the Wirthlin-Mellman survey so effectively discerned. Consequently their survey reinforces the **[*5]** conclusion that the BCRA will not reduce the appearance of corruption in American politics.

OTHER EXPERT REPORTS

4. Other expert witnesses have produced impressive reviews of public attitudes toward the current campaign finance system. They demonstrate effectively that the public has a skeptical, indeed cynical, view about the role of money in politics. They address a number of questions regarding public perception about various reform proposals. But they offer no persuasive evidence on the critical public opinion question in this case: "Will the Bipartisan Campaign Reform Act, as written, reduce the appearance of corruption in American politics?"

a. These experts point to surveys that purport to demonstrate popular support for specific campaign finance reforms. For example, Robert Shapiro points to majority support for a ban on soft money contributions to political parties (See Shapiro Declaration, p. 13). But, as demonstrated in my original declaration, the public has no clue about the distinction between "soft" and "hard" money contributions. And, as demonstrated in our survey discussed above, the public views the BCRA "hard" money contribution

limits to political parties as large contributions, with presumably all the nefarious effects attributed to any large contribution. What is driving these public perceptions is not "soft money" versus "hard money," or "regulated money" versus "unregulated money," but money itself. But the BCRA actually raises the hard money contribution limits to individual candidates, and sets hard money contribution limits to political parties at a level that the public overwhelmingly views as "large." Therefore the BCRA, as written, will not reduce the appearance of corruption in American politics.

[*6] b. These experts argue that the public thinks campaign finance reform will improve the political system. But the evidence offered to support that proposition is a classic case of survey research creating rather than measuring public opinion, as explained in my original declaration.

i. For example, Jonathan Krasno and Frank Sorauf point to an agree/disagree question: "I have more optimism about government since campaign finance reform passed Congress and will be implemented in November," with 50 percent agreeing and 31 percent disagreeing. But the survey organization that produced that result also showed that only one out of five respondents even knew the Senate had passed BCRA (See Pew Research Center, April 18-22, 2001), so the question had to educate the respondents about passage of the Act before it could "measure" their opinion on the subject about which they had just been educated. Moreover, the word "reform" has such a positive connotation in American politics that "reform" of anything—environmental laws, health care, the Internal Revenue Service—is likely to generate a supportive response.

ii. The Krasno-Sorauf report also cites a Gallup question: "In general, if new campaign finance reform legislation were passed, do you think it would make our democratic form of government work much better than it

does now, just a little better, about the same, just a little worse, or much worse than it does now?" 22 percent said much better, 37 percent a little better, and 32 percent the same. But the same survey organization produced directly contradictory findings, cited in my original declaration, that only about one-fourth of Americans thought "major changes to the laws governing campaign finance could succeed in reducing the power of special [*7] interests in Washington," while about two-thirds thought that "no matter what new laws are passed, special interests will always find a way to maintain their power in Washington." See Gallup Poll, March 20-22, 1998, October 6-9, 2000, February 8-10, 2002. These shifting results with different question wording are typical of a shallow and poorly informed public opinion discussed in my original declaration.

c. These experts decry the cynical attitude of the American public toward the American political system, and there is little question that a deep vein of cynicism exists. But it is worth noting that this level of cynicism has not raised "corruption in government" high on the list of American concerns, nor has it undermined the legitimacy of the government in the eyes of most Americans.

i. A Richard Wirthlin survey taken April 5-8, 2002, asked about "the single most important problem facing the United States today." "Government corruption" was mentioned by only 1 percent of the respondents. See Wirthlin Worldwide, April 5-8, 2002.

ii. The Senior Editor of the Gallup survey argued in January of this year: "(T)he lack of public trust in government in this country was never shown to be inimical to the functioning of democracy. Indeed, the levels of trust found by polls appear to be more an artifact of question wording than a real, substantive measure of how much Americans support their government. Since the allegedly low levels of trust of the past 17 years or so did not

appear to hurt democracy, there is little reason to believe that higher levels will now help. . . (W)hatever its varied levels over the years, trust has never fallen so low as to threaten the legitimacy of the governmental [*8] system." See David W. Moore, "Just One Question," Public Perspective, January/February, 2002 (attached hereto as Exhibit B).

CONCLUSION

5. Only rarely do the expert reports focus precisely and sharply on the one truly important public opinion question in this case: "Will the BCRA reduce the appearance of corruption in American politics?" When they do provide data to inform that question, such as in the Wirthlin-Mellman survey, they reinforce the fundamental conclusion from my original declaration: the Bipartisan Campaign Reform Act will not reduce the appearance of corruption in American politics.

I declare under penalty of perjury that the foregoing is true and correct.

s/
Q. Whitfield Ayres

Executed on October 7, 2002

[EXHIBITS OMITTED]

DECLARATION OF DOUGLAS L. BAILEY

[DEV Vol 6, Tab 2]

1. My name is Douglas L. Bailey. In 1968, I founded Bailey, Deardourff & Associates, which was among the first national political consulting firms, working for Republican candidates for Governor, Congress, Senate, and President. Our clients included Gerald Ford's Presidential Campaign, and over fifty successful campaigns for Governor or the United States Senate in 17 states.

2. As campaign consultant, my job was to plan the campaign and then create broadcast advertisements that would shape its outcome. In 2000, John Deardourff and I were each among the first eight recipients of the American University - Campaign Management Institute's "Outstanding Contribution to Campaign Consulting" Award given to the consultants who have best represented the ideals of the profession and shown concern for the consequences of campaigns on public attitudes about our democratic process. In this declaration, I will describe what I believe are widely understood in the industry as basic rules of crafting effective political advertisements.

3. In the modern world of 30 second political advertisements, it is rarely advisable [2] to use such clumsy words as "vote for" or "vote against." If I am designing an ad and want the conclusion to be the number "20," I would use the ad to count from 1 to 19. I would lead the viewer to think "20," but I would never say it. All advertising professionals understand that the most effective advertising leads the viewer to his or her own conclusion without forcing it down their throat. This is especially true of political advertising, because people are generally very skeptical of claims made by or about politicians.

4. Contrary to what many people would like to believe, it is well known among campaign consultants that the "swing voters" who regularly determine the outcome of elections usually vote on candidate personalities, rather than issues.

Regardless of the substantive topic of any particular ad, one of the single most important message that a political ad can convey is the underlying sentiment that a candidate has values similar to or different than the target viewers of the ad. A campaign commercial is most effective if the candidate is perceived as likeable to the citizens relaxing in their living rooms, and if the viewers feel comfortable that the candidate shares their values. Often, the substantive issue is merely the vehicle used to demonstrate personal qualities.

5. The notion that ads intended to influence an election can easily be separated from those that are not based upon the mere presence or absence of particular words or phrases such as "vote for" is at best a historical anachronism. When I first entered this business, and up through the mid-1980s, we were regularly able to purchase five minute slots of air time. In a five minute spot, I could introduce a candidate, bring the viewer to a comfort level with the candidate, cover a few different substantive issues, and at the end, have the candidate make a direct appeal for a vote. In this by-gone era, it made sense for a candidate to appeal directly for votes using words such as "vote for," "support," or "cast your ballot" on the basis of a more full or substantive story told in a five minute time period. By contrast, in a 30 second ad, there is not enough time to make a positive direct sale.

6. In the era of the 30 second ad, it is a mistake to view any particular electioneering [3] advertisement as a campaign in and of itself. Over time, a campaign defines a candidate through a combination of style, image, and issues. Even shortly after watching an ad, the target audience usually doesn't remember the ad's substantive details. Rather, the viewers just get a feel for the candidate. It takes a lot of these "feels" to make up a campaign. Thirty second campaign ads, therefore, must be viewed collectively. It is impossible for the political ad consultant to truly close a positive sale until after he has had time to build the candidate's image through a series of 30 second spots.

7. Even if an electioneering ad aired in August, September, or October used words such as "vote for," "support," or "cast your ballot," it would do little good. People's minds may change from day to day about how they intend to vote, or more likely, they aren't significantly focused on whom to vote for until the days immediately prior to the election. Thus, the only real sale date is on election day in November. In the months leading up to that "sale date," the most important positive thing an ad can do is to create a general impression of a candidate that the voters will internalize over time, and that will hopefully sink in by election day.

8. Even if the goal of an early-September electioneering ad were to make a direct pitch for a vote, it would be nearly impossible to do it effectively. It is amazing how short thirty seconds really is when you are trying to craft a political ad. There is barely enough time to effectively convey a single theme. If you change course in the final five seconds of an ad, you may undo everything that you have attempted to accomplish in the previous 25 seconds. Therefore, it is uncommon that you would see a political advertisement on television that says "Candidate X is tough on crime" and then breaks that flow and switches to the entirely separate point of "Please vote for Candidate X."

9. In addition to the work we did for candidates at Bailey, Deardourff, we also did political ads for political parties and issue groups. When we were creating true issue ads (e.g., for ballot initiatives or more general issues such as handgun control), and when we were creating true party building ads, it was never necessary for us to reference specific candidates for federal [4] office in order to create effective ads. For instance, we created a serious of ads opposing a gambling referendum in Florida which made no reference to any candidates. We were successful in conveying our message, and the referendum failed two to one.

10. For instance, in 1982 we were hired by the National Republican Congressional Committee to counteract the effects of the declining economy that usually result in the President's party losing numerous Congressional seats during the mid-term election. We designed a series of ads that were generally called the "Stay the Course" campaign. These ads emphasized that Republicans had only just begun enacting an economic agenda that would turn the economy around, and that the country needed to give it more time to work. This ad campaign was credited with helping Republicans keep more seats than would normally have been expected. We set the tone for the entire election season without ever mentioning specific candidates.

11. Similarly, issue organizations can design true issue ads without ever mentioning specific candidates for federal office. In my decades of experience in national politics, nearly all of the ads that I have seen that both mention specific candidates and are run in the days immediately preceding the election were clearly designed to influence elections. From a media consultant's perspective, there would be no reason to run such ads if your desire was not to impact an election. This is true not only in the 60 days immediately prior to an election, but probably also in the 90 or 120 days beforehand.

12. When I had a client who wanted to run a true issue ad to change or bolster public attitudes on an issue, I would recommend, if possible, avoiding the time period when the airwaves are saturated with electioneering ads. Such pure issue ads would likely get drowned out by the din of election related ads. Moreover, any ads that mention specific candidates that are aired during the height of an election season are almost certain to be perceived by the public as electioneering.

13. Few political advertisements go onto television without being subject to rigorous [5] polling, word testing, and focus groups. This is big business and a lot of money goes into pre- and post-development analysis. The political

parties and issue groups that run so-called "issue ads" in the fall of an even-numbered year know exactly what they are doing. I certainly don't think that it is inappropriate for these organizations to sponsor broadcast ads that talk about issues and include positive or negative comments about particular candidates, I just wouldn't call them "issue ads." They are designed to influence elections and should be recognized as such.

14. These so-called "issue ads" are a phenomenon of the last 12 to 15 years. The serious explosion of these ads took place prior to 1996, and with that year's campaign by the Democratic National Committee. Since that time, political advertising has become a no-holds-barred war. When I consulted on dozens of campaigns in the 1970s and 1980s, we operated under essentially the same set of rules that governed in 1996, but many of today's practices would have been considered dangerous and wrong then, both politically and legally. In the post-Watergate era, we were worried about not only obeying the rules, but also assuring that our clients were seen as trying to clean up the image of the political process. But due to a lack of enforcement and a willingness on the part of some to win at all costs, these concerns appear to have dissipated.

15. Burned out by the nonstop madness of campaign life, in 1987 I became Founder and Publisher of the *Hotline*, which is a bipartisan daily briefing on American politics that "covers the coverage" of campaigns, candidates and issues from TV, radio, and 400 daily papers across the country. The *Hotline*'s audience includes The White House, nearly every office on Capitol Hill, the campaign consultant industry, the interest groups, the political parties, the national TV networks, and more than 60 daily newspapers. I sold my interest in the *Hotline* to National Journal Inc. in 1996, but remain as a part-time consultant.

16. Currently, I am President and co-Founder (with Mike McCurry, former Press Secretary to President Clinton) of Freedom's Answer, a non-partisan, non-profit project of

Youth-e-Vote, a 501 (c) (3) organization. Freedom's Answer is the largest non-partisan get-out [6] -the-vote drive ever organized in this country. Starting this September 11th, Freedom's Answer volunteers have begun registering new voters, getting pledges to vote from family, friends, and neighbors, and making sure they actually turnout to vote on election day. While every American can take part in Freedom's Answer, the "ground troops" for the campaign are high school students in the Youth Voter Corps. A record-setting vote this November will show the world that the September 11th attacks only strengthened our nation's commitment to stand together for freedom. Which candidate or party wins is less important than that freedoms wins. And freedom wins when all who can vote do vote.

17. Ideally, there would be no need to organize such a massive effort in order to encourage people to exercise their right to vote. Declining voter participation rates are well documented: in the 2000 Presidential race, barely half of all eligible voters bothered to show up at the polls. The sad truth is that people now need to be convinced that they can have a meaningful effect on the political process. Although I cannot purport to be able to precisely attribute any particular percentage of the decline in voter turnout to any particular factor, I have had a front row seat during the last four decades of national political campaigns. I have no doubt that the rise in the quantity and importance of soft money has shifted power away from local networks of citizens to the big contributors and the campaign consultants who orchestrate massive national media campaigns, and to the national media itself. A ban on soft money, together with efforts such as Freedom's Answer, can hopefully restore our nation's faith in democracy.

DECLARATION OF JAY C. BANNING

I, Jay C. Banning, do declare and state as follows:

1. My name is Jay C. Banning. I am currently Director of Administration and Chief Financial Officer of the Republican National Committee ("RNC"). I have served in those capacities since 1983, and I have been employed by the RNC in those and other capacities for twenty-six years. My curriculum vitae, which contains a more detailed description of my professional background, is attached hereto. See RNC Exhibit No. 2292, attached hereto as Attachment 1. Except where otherwise indicated, this declaration is based upon my personal knowledge.

[*2] 2. The various RNC exhibits attached to this declaration are to the best of my knowledge true and correct copies of records prepared and kept by the RNC in the course of its regularly conducted business activities.

3. My responsibilities as Director of Administration of the RNC include overall management of the RNC's facilities, human resources, and security. As Chief Financial Officer of the RNC, my responsibilities include managing the RNC's budget, overseeing its finance and accounting personnel, maintaining the RNC's books and records, overseeing the RNC's annual audit, signing all contracts, paying all bills, serving as assistant treasurer for the Republican National Conventions and for the various RNC non-federal accounts registered with state authorities under state law, and generally managing the RNC's finances.

I. History of the RNC's Non-Federal Accounts.

4. By the time I arrived at the RNC in 1976, the Federal Election Campaign Act ("FECA") was already in effect. The United States Supreme Court had recently ruled on its constitutionality, on January 30, 1976. After a period of

legal analysis and adjustment, the RNC concluded that its historical ability to raise and spend money for state and local election activity, pursuant to state law, was not affected by FECA.

5. The first non-federal account opened by the RNC after enactment of the FECA was the "Committee to Preserve the National Republican Center" -- the so-called "building fund" account -- which was opened by the RNC on or before June 10, 1977. Non-federal funds raised for the building fund account are raised from corporations, labor unions, trade associations, and individuals. The Internal Revenue Service form assigning a taxpayer identification number to this account is attached hereto. See RNC Exhibit No. 1799, attached hereto as Attachment 2. In 1978, the building fund was used to purchase the RNC's current headquarters facility at 310 First Street, S.E., Washington, D.C. In 1991, the RNC used the [*3] building fund to finance the purchase of a warehouse for records storage. All of the RNC's national operations are housed in the headquarters building, including activities supporting federal, state, and local elections, as well as the RNC's general research, policy analysis, and communications operations. Building fund money is not used for campaign activities or to influence federal elections.

6. Beginning in early 1978, the RNC opened several non-federal accounts reserved for funds raised in compliance with state campaign finance laws. These were each designated as Republican National State Elections Committee accounts ("RNSEC," pronounced "rehn-seck").

7. It is my understanding that state campaign finance laws vary widely from state to state. It is also my understanding, however, that it is possible to group the states into several categories that share common regulatory characteristics. The RNC assigned a separate RNSEC account

to each such category and raises funds for each account in compliance with the laws of the states within that category.

8. On or before March 7, 1978, the RNC established the "RNSEC-Corporate" account. See RNC Exhibit Nos. 1797, attached hereto as Attachment 3 (IRS taxpayer identification number notice). The "RNSEC-Corporate" account collects corporate funds, which may be used to make contributions in the numerous states that permit corporate contributions in connection with state and local elections.

9. Some of the states that allow corporate contributions have specific limitations on the sources of the corporate contributions, however. For example, certain of those states do not allow corporate contributions by insurance companies or public utilities. The "RNSEC-Limited Corporate" account, also established on or before March 7, 1978, is used to raise corporate funds that do not originate with any of those sources that are prohibited under the laws of certain states. See RNC Exhibit No. 1798, attached hereto as Attachment 4 (IRS taxpayer identification number **[*4]** notice). Amounts contained in the RNSEC-Limited Corporate account are used to pay for non-federal activities in those states.

10. The "RNSEC-Operating" account, also established on or before March 7, 1978, holds only individual donations. See RNC Exhibit No. 1796, attached hereto as Attachment 5. Funds in the RNSEC-Operating account may be used both in states that prohibit corporate funds and in many other states.

11. The RNC also established RNSEC state-specific accounts, which are used in connection with states whose campaign finance laws have peculiarities that would prevent the RNC from using RNSEC-Corporate, RNSEC-Limited Corporate, or RNSEC-Operating account funds for

disbursements in those states. The RNC raises funds for these state-specific accounts pursuant to applicable state law.

12. The RNC established a state-specific account for Michigan on or before May 23, 1978. See RNC Exhibit No. 1795, attached hereto as Attachment 6 (IRS taxpayer identification number notice).

13. The RNC established a state-specific account for Vermont on or before July 5, 1978. See RNC Exhibit No. 1794, attached hereto as Attachment 7 (IRS taxpayer identification number notice). This account was later closed, in response to changes in state law.

14. The RNC established a state-specific account for Florida on or before March 21, 1980. See RNC Exhibit No. 1791, attached hereto as Attachment 8 (IRS taxpayer identification number notice). This account was later closed, in response to changes in state law.

15. The RNC established a state-specific account for Wisconsin on or before March 21,1 980. See RNC Exhibit No. 1793, attached hereto as Attachment 9 (IRS taxpayer identification number notice). This account was later closed, in response to changes in state law.

[*5] 16. Additional state-specific accounts have been opened by the RNC over the years, in response to changes in state laws. In 1994, the RNSEC-Merchant account was opened to facilitate credit card donations to other RNSEC accounts. The RNSEC-Administrative account was opened in 1998 to accept donations from certain entities whose donations to political parties may not legally be used for campaign-related purposes, whether federal or non-federal. RNSEC-Administrative account funds are used solely to pay the non-federal share of the RNC's administrative overhead expenses.

17. The following is a complete list of the twelve RNSEC accounts currently maintained by the RNC:

- RNSEC-Corporate
- RNSEC-Limited Corporate
- RNSEC-Operating
- RNSEC Administrative
- RNSEC Merchant
- Michigan
- California
- New York
- Massachusetts
- North Carolina
- Rhode Island
- Missouri

18. The RNSEC accounts are registered as "political committees" or as "political party committees" in many of the states, pursuant to applicable state campaign finance laws. In other states, the RNSEC accounts are not required to be registered, but disbursements from the **[*6]** RNSEC accounts in connection with state and local elections within those states are reported by the RNC to the relevant state election agencies, as required by state law.

19. The RNC currently employs three staff members, under my supervision, who do nothing but prepare disclosure reports for the RNSEC accounts. Those reports are

regularly filed with the relevant state election agencies and are generally made available by the states for public review. I personally sign RNC disclosure reports filed in 30 states. In addition, I am personally listed as treasurer, deputy treasurer, or assistant treasurer for the RNC's state accounts in 30 states.

20. The RNC also maintains the Republican Governors Association's ("RGA") "Conference Account," which is used by the RGA primarily to hold funds raised from municipal securities dealers. Because the rules governing licensed municipal securities dealers may prevent them from contributing funds to federal, state, or local candidates, funds donated to the RGA Conference Account are not used in connection with any elections and are used instead to support associational activities of the RGA such as meetings, conferences, and noncampaign-related travel by RGA members and staff

21. All funds raised by the RNC are reported to the Federal Election Commission, and may also be reported to one or more state election agencies, pursuant to applicable state law. All receipts from a single person aggregating to more than $200 in a calendar year are itemized in reports filed monthly with the Federal Election Commission, The itemized reports provide information regarding the source of the donation, address of the donor, amount of the donation, date of the donation, and in the case of individual donors, the occupation and name of the employer. I am aware of no other type of organization that publicly reports its receipts in this much detail and this often.

[*7] 22. All funds disbursed by the RNC are reported to the Federal Election Commission, and may also be reported to one or more state election agencies, pursuant to applicable state law. This includes all disbursements to state and local political party committees. All disbursements to the same person aggregating to over $200 per calendar year are

itemized in reports filed monthly with the Federal Election Commission. I am aware of no other type of organization that publicly reports its disbursements in this much detail and this often.

II. How the RNC Spends Non-Federal Funds.

23. The RNC spends non-federal funds, subject to applicable state law, on a very wide range of activities that are not in connection with federal elections.

24. It is well-known that for many years the RNC has produced and aired television, radio, and print advertising promoting the Party's message on many issues, without expressly advocating the election or defeat of clearly identified federal candidates. Examples of such "issue advertisements" sponsored by the RNC in recent years are attached with this declaration. See RNC Exhibit No. 1760, attached hereto as Attachment 10 (1994 *TV Guide* print advertisement regarding Contract with America).

25. Under current Federal Election Commission regulations, the RNC is required to pay for issue advertisements using no more than 35 percent non-federal funds and no less than 65 percent federal funds during presidential election years. During non-presidential election years, the RNC is required to pay for issue advertisements with no more than 40 percent non-federal funds and no less than 60 percent federal funds. See 11 C.F.R. § 106.5. During the 2000 election cycle, the RNC provided, either directly or through state parties, $43.6 million of non-federal funds and $27.6 million of federal funds for issue advertising.

26. It is far less well known that the RNC also pays for a range of other vital party-building and associational activities in whole or in part with non-federal funds.

27. Many of the costs associated with these activities are reflected in the RNC's "administrative overhead" expenses, which under current law are paid for using a mix of federal and non-federal funds. Administrative overhead includes the operating costs of RNC facilities, such as utility bills and maintenance, fundraising costs, and routine expenses for travel and supplies. Administrative overhead also includes the salaries of RNC employees. During the 2000 election cycle, the RNC spent $35.6 million of non-federal funds and $52.9 million of federal funds on administrative overhead.

28. Examples of party-building and associational activities paid for in whole or in part with non-federal funds include, but are not limited to, the following:

(a) **Direct support for state and local candidates.** The RNC provides direct support for state and local candidates, as does the RGA. All RGA disbursements are reported by the RNC to the Federal Election Commission on the RNSEC disclosure reports. The RNC also sometimes provides direct support for state and local referenda and ballot initiative campaigns. Such direct support takes the form of contributions to state and local candidates and other political committees, as well as disbursements for advertising or other materials advocating the election or defeat of state and local candidates or support or opposition to referenda and ballot initiatives. The RNC's support for state and local candidates includes direct support for state and local candidates in the five states that currently hold their state and local elections during odd-numbered years, when there are ordinarily no federal candidates on the ballot. These five states are Kentucky, Louisiana, Mississippi, New Jersey, and Virginia. Many states hold municipal elections during odd-numbered years, and special elections for state office sometimes occur during odd-numbered years even in states that hold their regularly scheduled elections in even numbered federal election years.

The following chart demonstrates the scale of RNSEC support, using 100 percent non-federal funds, for state and local election activity during the most recent two odd-numbered election years, 1999 and 2001.

RNSEC DISBURSEMENTS FOR STATE AND LOCAL ELECTION ACTIVITY IN ODD-YEAR ELECTIONS

	Transfers to State Party	Contributions to State and Local Candidates	Direct Spending	Total
1999				
Kentucky	$75,050			$75,050
Louisiana	$2,000	$172,282		$174,282
Mississippi	$732,500	$614,850		$1,347,350
New Jersey	$26,400			$26,400
Virginia	$402,280	$258,000		$660,280
Other state elections	$2,731,680	$636,350		$3,368,030
Mayoral elections		$5,500		$5,500
TOTAL (All state and local elections combined)	$3,969,910	$1,686,982		$5,656,892
2001				
Kentucky				
Louisiana	$15,500	$5,000		$20,500
Mississippi	$42,500			$42,500
New Jersey	$72,000	$3,040,304	$1,167,000	$4,279,304
Virginia	$1,817,682	$4,040,715		$5,858,397
Other state elections	$4,347,342	$1,063,311		$5,410,653
Mayoral elections		$50,000		$50,000
TOTAL (All state and local elections combined)	$6,295,024	$8,199,330.18	$1,167,000	$15,661,354.18

(b) **State and local government affairs.** The RNC supports the associational activities of Republican state and local officials. For example, the RNC sponsors gatherings of **[*10]** Republican governors, lieutenant governors, state attorneys general, secretaries of state, and mayors. See RNC Exhibit No. 0435, attached hereto as Attachment 11 (Feb. 3, 2001, memorandum describing functions and activities of "Republican Lieutenant Governors Association"). The purpose of these gatherings is to allow Republican state and local officials to exchange information and ideas regarding legislative accomplishments and initiatives and to discuss among themselves major issues facing states, localities, and the Republican Party. The RNC, through its full-time Director of Government Affairs, also arranges and pays for meetings between Republican state and local officials and Congressional or Executive Branch officials, in order to highlight the accomplishments of Republican officials at the state and local level. During the 2000 election cycle, the RNC spent $199,000 of non-federal funds and $333,500 of federal funds on state and local government affairs.

(c) **Political training and support.** The RNC conducts training seminars on a range of practical skills and topics, including "grass roots" organization and mobilization techniques, fundraising, campaign management, and campaign finance legal compliance. These training seminars are attended by Republican candidates, activists, and campaign staff, including many who are principally involved in the campaigns of state and local candidates, as well as state and local party officials. As an example, instructional materials produced by the RNC for RNC-run seminars on fundraising for "state legislative and local campaigns" are attached hereto. See RNC Exhibit No. 1612, attached hereto as Attachment 12. Typical attendees for such seminars include campaign managers for state and local candidates. See RNC Exhibit No. 2165, attached hereto as Attachment 13 (application to attend RNC fundraising seminar by Cynthia

Wilcox, campaign manager for Boise, Idaho mayoral campaign). During 2000 election cycle, the RNC conducted 117 so-called "nuts and bolts" seminars, providing training on grass roots organization and "get-out-the-vote" activities. See RNC Exhibit No. 0387, attached hereto as **[*11]** Attachment 14 (example of "nuts and bolts" training materials). In addition, the RNC conducted 3 Campaign Management College seminars, teaching campaign management strategies and skills, and a Campaign Finance College seminar, focusing on fundraising techniques. Attendees included activists, candidates, and campaign staff from the federal, state, and local level. At least 10,000 people participated in RNC-sponsored training seminars nationwide during the 2000 election cycle. Examples of Republican governors who participated in the RNC's training programs during the 2000 election cycle are Governors Jeb Bush (Florida), Mike Huckaby (Arkansas), George Ryan (Illinois), Frank Keating (Oklahoma), Bob Taft (Ohio), and John Engler (Michigan). The RNC currently employs four full-time staff engaged in overseeing political training and support in its Political Education and Training Department. During the 2000 election cycle, the RNC spent $391,000 of non-federal funds and $671,000 of federal funds on political training and support.

(d) **Research.** The RNC currently employs 41 researchers who generate a large volume of original research and analysis on public policy issues, media coverage of the Republican Party, legislative initiatives and accomplishments of Republican officeholders, state and local elections, and federal elections. This research is distributed to RNC officers and staff, RNC national committeemen and committeewomen, Republican state party chairmen, Republican officeholders at the federal, state, and local levels, RNC donors and adherents, the media, and the general public. The RNC uses this research to help refine the Party's message and positions on major issues and to disseminate the same widely within and without the Party. See RNC Exhibit No. 0045, attached hereto as Attachment 15 (example of RNC research brief on public

policy issue). During the 2000 election cycle, the RNC spent $1,322,000 of non-federal funds and $2,298,600 of federal funds on research.

[*12] (e) **Support for allied groups and minority outreach.** The Republican Party benefits from the activism and organizational capacity of numerous allied groups, including College Republicans, Young Republicans, and Republicans Abroad. These organizations operate independently of the RNC, but the RNC uses non-federal funds to provide them with financial support. These allied groups recruit members, register voters, and propagate the message of the Republican Party. The RNC supports allied organizations that work to expand minority membership in, and support for, the Republican Party. These organizations include the Hispanic Assembly, the National Federation of Republican Women, and the National Black Republican Council. The RNC also develops and disseminates materials aimed at national, state, and local party staff to build minority outreach efforts. See RNC Exhibit No. 2239, attached hereto as Attachment 16 (RNC manual on outreach to Hispanics); RNC Exhibit No. 0275, attached hereto as Attachment 17 (RNC strategic plans for minority outreach efforts). In addition, the RNC produces and distributes promotional materials directed to potential minority supporters. One example is a Spanish-language video produced by the RNC this year in order to deliver the Republican message to Hispanics. The tape features appearances by Hispanic leaders in the Republican Party, such as HUD Secretary Mel Martinez. During the 2000 election cycle, the RNC spent $1,211,000 of non-federal funds and $2,163,000 of federal funds on support for allied groups and minority outreach.

(f) **Communications.** The RNC's Communications Department, which currently employs 3 1 persons, disseminates public information about the Republican Party and responds to inquiries from the public and the media. A presentation prepared by the Communications Department

describing its mission and functions is attached hereto. See RNC Exhibit No. 2169, attached hereto as Attachment 18. The RNC's public communications efforts are vital to propagating the Party's message and clarifying its positions on major public policy issues. For **[*13]** example, the Communications Department has often articulated the Party's opposition to legislative efforts to restrict the Party's free speech and associational rights or to federalize campaign finance law. The Communications Department also produces publications articulating the Party's message and reporting on Party-related news, which it circulates to the media and the general public. The RNC also communicates directly with its own members and adherents, a function that is vitally important to building the Party. While the RNC's rules treat as "members" only the 165 voting members of the RNC, the RNC informally treats many thousands of supporters as members for associational and communicative purposes. The RNC communicates with these members through a members-only limited access area of its web site, as well as through the U.S. mail and through electronic mail. Although it is my understanding that membership organizations are allowed to communicate with their members on any subject (including expressly advocating the election or defeat of federal candidates) using unregulated money from any source, the RNC currently must pay for communications with its members with a mix of federally regulated and state-regulated funds. Under the BCRA, the RNC will be required to pay for these communications with members and adherents using 100 percent non-federal funds. During the 2000 election cycle, the RNC spent $2,499,000 of non-federal funds and $4,254,000 of federal funds on communications.

(g) **RNC annual meetings and conferences.** The RNC conducts three annual meetings that draw Party officials from across the nation. These meetings are attended by state party chairmen and executive directors, national committeemen and committeewomen, and various other Republican activists. In addition to the quadrennial

Republican National Convention, these meetings represent the main fora for the exchange of views, debate of issues, and formulation of Party rules and policy within the Republican Party. During the 2000 election **[*14]** cycle, the RNC spent $455,000 of non-federal funds and $775,000 of federal funds on RNC annual meetings and conferences.

(h) **RNC membership in associations and international organizations.** The RNC is a member of various associations and international organizations, such as the International Democratic Union, the American Democratic Union, and the Pacific Democratic Union. The RNC pays its membership dues in these organizations using 100% non-federal funds. During the 2000 election cycle, the RNC spent $163,900 of non-federal funds on membership dues.

(i) **Redistricting.** The RNC plays a major role in coordinating the Party's approach to redistricting of electoral districts by state legislatures, and in financing legal challenges associated with redistricting. Redistricting involves re-drawing the lines for both state legislative districts and Congressional districts. During the 2000 election cycle, the RNC spent $574,000 of non-federal funds and $306,000 of federal funds on redistricting. During 2002, the RNC expects to spend $4.1 million on redistricting, approximately 70 percent of which will be paid for with non-federal funds.

III. Transfers to State Parties.

29. In addition to spending non-federal funds directly, the RNC also transfers large amounts of non-federal funds to state party committees. During the 2000 election cycle, the RNC transferred $88.2 million of non-federal funds to state party committees.

30. Many of the Republican state party committees are heavily dependent on these transfers to cover the cost of their operations. Among the state parties that will be hardest

hit by the loss of these transfers under the BCRA are the Republican Parties of Arkansas, Maine, North Carolina, Oregon, and Wisconsin.

31. RNC transfers of non-federal funds to the state parties play a critical role in subsidizing the activities of the state parties. The state parties depend on these funds to pay for **[*15]** everything from their own administrative overhead to voter mobilization, grass roots organizing, and media. By transferring non-federal funds to the state parties, the RNC is able to help sustain strong state party organizations, even in states that have limited in-state donor bases. These transfers ensure that funds are distributed to state party organizations that would otherwise have difficulty raising substantial funds on their own.

IV. Effect of the BCRA on RNC Operations.

32. The RNC currently employs 378 individuals. Based on current projections, the RNC expects that the ban on raising and spending non-federal funds by national political party committees will require the RNC to lay off approximately 150 employees, accounting for approximately 40 percent of the RNC's total workforce.

33. It is too soon to say how reductions in personnel and operational spending will be distributed across the RNC's many activities that are financed in whole or in part with non-federal funds.

34. While the BCRA permits the RNC to raise and spend funds subject to federal source and amount limitations, the RNC will not be able to replace non-federal funds with federal funds. The RNC has historically lacked sufficient federal funds to meet the needs of its federal candidates. For example, during the 1993-1994, 1995-1996, 1997-1998, and 1999-2000 election cycles, the RNC did not provide every eligible House and Senate candidate with the maximum

permissible contributions and coordinated expenditures. Indeed, the RNC's federal accounts ended up in debt at the end of the 1993-94, 1995-96, and 1997-98 election cycles. If the RNC had had more federal funds available, it would have contributed more money to more federal candidates. Devoting additional resources to raising federal funds will not make up for lost non-federal funds because the RNC already maximizes its investment in prospecting for **[*16]** additional donors of federal funds. Further prospecting would result in diminishing marginal returns.

35. Based on my 26 years of experience working with RNC financial issues, it is clear to me that the BCRA will severely restrict the ability of the RNC to:

(a) communicate with its adherents;

(b) provide direct financial support to state and local candidates;

(c) provide direct financial support to state and local political parties;

(d) work closely with state and local parties and candidates, especially if these parties and candidates are continuing to raise and spend non-federally regulated funds; and

(e) disseminate the Party's message on important issues to a broad national audience.

I declare under penalty of perjury that the foregoing is true and correct.

s/
Jay C. Banning

Executed on October 4, 2002

[EXHIBITS OMITTED]

DECLARATION OF ELAINE BLOOM

[DEV 6, Tab 7]

1. My name is Elaine Bloom.

2. I am currently engaged in consulting, public speaking, and community activities. In 2001, I was a candidate for Mayor of Miami Beach, Florida. In 2000, I was the Democratic candidate in the general election to represent Florida's 22nd Congressional district, running against the incumbent Republican Clay Shaw, who had served in Congress for nearly 20 years. In this election, Congressman Shaw was declared the winner by a margin of approximately 500 votes out of over 200,000 cast. Prior to this 2000 race, I served as a member of the Florida House of Representatives for over 18 years, from 1974 to 1978 (representing Northeast Dade County) and from 1986-2000 (representing Miami Beach and Miami). I was Speaker Pro-Tempore of the Florida House from 1992 to 1994, and during my time there I also served as chair of several legislative committees, including the Health Care Committee, the Joint Legislative Management Committee, the Joint Legislative Auditing Committee, and the Tourism and Cultural Affairs Committee. During my years in the Florida House, I focused on many issues, including health care, [2] authoring a number of bills to extend health insurance coverage and to make health care coverage available to more people. From 1993 to 2000, I served on the board of Andrx Corporation, a manufacturer of affordable generic drugs based in Fort Lauderdale, Florida. From 1990 to 1999, I served as Florida development director for Bar-Ilan University, which is based in Israel. From 1981 to 1985, I was Vice-President of the South Florida Broadcasting Company. From the late 1970's to the mid-1980's, I was a government relations consultant for several organizations, including the Florida Association of Jewish Federations, the Florida United Way and the United Protestant Appeal. I have also served on the boards of numerous Florida

organizations, including the Greater Miami Chamber of Commerce, the Florida International University Foundation, the Florida Philharmonic, the New World Symphony and the University of Miami Law School Visiting Committee.

3. National, state and local party committees all played important roles in the 2000 campaign to represent Florida's 22nd Congressional district. On the Democratic side, the Democratic Congressional Campaign Committee ("DCCC") provided some staff and other resources to support my campaign. In addition, the national, state and local Democratic parties participated in the "coordinated campaign," whose goal was to help get out the vote for Democratic campaigns at all levels, including the Presidential campaign of then-Vice President Al Gore and Senator Joe Lieberman, Bill Nelson's United States Senate campaign, and my campaign. Parts of the counties of Dade, Broward and Palm Beach comprised Florida's 22nd Congressional district when I ran in 2000 (note: the 22nd is different today), and the Democratic parties of all three of these counties played roles in the coordinated campaign. As I recall, I helped to raise some federal funds ("hard money") and non-federal funds ("soft money") for all of these parties as part of the coordinated campaign. The coordinated campaign did get-out-the-vote, voter registration, and absentee ballot activities. Florida was a targeted state for the 2000 Presidential race, and so the [3] coordinated campaign was a major effort driven primarily by the Presidential campaign. On the Republican side, the Florida Republican Party and the National Republican Congressional Committee ("NRCC") did a good deal of direct mail in support of Mr. Shaw's campaign, much of it attacking me, in my view unfairly and untruthfully. The congressional campaign committees of both major national parties also ran broadcast ads through their state parties in support of the Congressional candidates in Florida's 22nd district, as will be discussed below.

4. Interest groups were an important factor in the 2000 Congressional election in Florida's 22nd District. There was a lot of television and direct mail supporting Mr. Shaw's campaign by Citizens for Better Medicare, a group that I understand was funded mainly by the Pharmaceutical Research and Manufacturers of America, Inc. ("PhRMA"), which represents major corporations in the pharmaceutical industry. Other interest groups also ran many ads on television and radio in support of both major candidates, as will be discussed below.

5. In my experience in campaigns for federal, state and local office, including my involvement in the television advertising we ran in my race for Congress, no particular words of advocacy are needed for an ad to influence the outcome of an election. Many so-called "issue ads" are run in order to affect election results.

6. Television and radio advertising by political parties and interest groups had a tremendous influence on the outcome of the 2000 Congressional election in Florida's 22nd District. I do not believe there had never been a congressional race at any time, anywhere in Florida, with anywhere near what was spent on television by the campaigns, the parties, and interest groups. Although I did not have much time to watch television toward the end of the race, my campaign taped ads, showed them to me and made sure I was aware of what was going on. The AFL-CIO and the Florida Democratic Party ran many television "issue ads" in support of my campaign towards the end of the race, and these surely influenced the outcome to my benefit. However, based on my [4] observations, broadcast "issue ads" run in the last few weeks of the campaign by groups representing business interests, particularly the PhRMA group Citizens for Better Medicare, and by the Republican Party were deciding factors in this extremely close race, particularly because, in my view, they were mean-spirited attack ads. We did extensive polling in the race, including daily tracking polls over the final few weeks. As I recall, this polling indicated

that the ads run in the last few weeks by these interest groups and the NRCC (through the Florida Republican Party) caused my numbers to decline substantially, from well over 50% to essentially a dead heat at the end. Of course, my campaign was not the only entity with access to tracking polls in this race. In my view, the extraordinarily intense ad spending toward the end of the race by these groups indicates that they had information that I was likely to win. Long time incumbents like Mr. Shaw rarely receive that kind of attention unless they are in danger of losing. The groups rushed to defend Mr. Shaw, who had been their ally for many years in Congress and who served on the important House Ways and Means Committee. The major pharmaceutical companies PhRMA represents felt they had much to lose if the 107th Congress passed a Democratic version of a Medicare prescription drug bill, and Citizens for Better Medicare spent massively nationwide for ads in support of people like Mr. Shaw who they felt would work to prevent that. I also feel that, given my background on health care issues, the pharmaceutical industry would have been especially displeased to see me in Congress.

7. The role that so-called "issue ads" run by political parties and interest groups played in the 2000 race in Florida's 22nd Congressional district was also a subject of public and private discussion between my campaign and Mr. Shaw's campaign. As I recall, there were two significant interactions between our campaigns about it. The first, in September 2000, occurred when Mr. Shaw held a press conference and announced that he had sent a letter to me offering for both of us to disavow party or independent entity "issue ads." As I recall, he had the letter delivered at least [5] one day after he went to the press with it. At that point, the AFL-CIO had done some ads in the Palm Beach media market critical of Shaw's positions, but no group had yet come forward in support of him or in opposition to me. Further, the DCCC, through the State Party, had just begun television advertising.

8. When the press called me for a response to Mr. Shaw's letter, I said that if Mr. Shaw was serious about campaign finance reform, he should go back to Washington and get the Shays- Meehan legislation to the floor of the House and help to pass it. I also said I had no control over the ads that the AFL-CIO or the DCCC were running. I rejected his offer because I understood that he was attempting to end the election before it really got underway. He was the incumbent; he had much higher name ID; he was approaching $1 million in PAC money, and he and I both knew he was ahead in the polls. I said at the time that he had the opportunity to change the law by voting for Shays-Meehan and he failed to do so. When Senator John McCain came to Palm Beach to campaign for Shaw, I made the same points. I was not going to live by the rules he had voted against.

9. In October, there was a televised debate between Mr. Shaw and me, and the issue came up again. In the debate, Mr. Shaw said he thought soft money ads improperly swayed elections. Immediately after the debate, I challenged him to agree to end all negative ads by himself and by groups supporting him. I said, "I will agree not to mention your name in my ads and ask those supporting me to do the same, if you will agree to do likewise." Mr. Shaw did not accept my offer.

10. The Florida Democratic Party ran so-called "issue ads" directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. Storyboards representing four of these ads, which I understand were run on television in the two months prior to the general election, are attached as Exhibit 1 to this Declaration. I understand that these storyboards and all others attached to this Declaration were provided by the Brennan Center for Justice, which had [6] obtained them by arrangement with the Campaign Media Analysis Group ("CMAG"). My understanding is that these ads were actually DCCC ads run through the Florida Democratic Party to get the better hard

money-soft money allocation rate. Obviously, I did not know anything about the content of these ads or how frequently they would run until after they began running. As I recall, Mr. Shaw publicly objected to the ads attached at Exhibit 1 at 1 and 4, arguing that although they said he had voted with Republican leaders nearly 90% of the time, in fact the correct number was only 86% or 87%. As I recall, the ad attached at Exhibit 1 at 4 was run extensively in September 2000, and I believe it may have been a factor in Mr. Shaw's request that we call off the soft money ads at around that time. These Florida Democratic Party ads were clearly run for the purpose of electing me.

11. The Florida Republican Party also ran broadcast ads directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. Storyboards representing two of these ads, which were run on television very heavily in the two months prior to the general election, are attached as Exhibit 2 to this Declaration. My understanding is that, as on the Democratic side, these ads were actually NRCC ads run through the Florida Republican Party. I believe that the attack ad attached at Exhibit 2 at 1 ("FL/FLGOP Bloom Cheating Seniors"), which was run just before the general election, had a particularly strong effect on the outcome. As I recall, the Florida Republican Party also ran a significant number of "issue ads" against me on radio prior to the election. All of these ads were clearly intended to help defeat me in the election.

12. The AFL-CIO ran television ads directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. Storyboards representing three of these ads, which were run on television prior to the general election, are attached as Exhibit 3 to this Declaration. Television ads by the AFL-CIO, as I recall particularly ads on repetitive motion injuries like the one attached at Exhibit 3 at 1 ("AFLCIO/Call Clay Shaw"), were a key factor in Mr. Shaw's request in [7] September 2000 that we call off the groups running soft money ads. The storyboard attached at

Exhibit 3 at 3 ("AFLCIO/Sherwood Sided With Drug Industry") actually names a candidate other than Mr. Shaw, and I understand this is because it is a "cookie cutter" ad run in more than one race, which the CMAG technology records the same way after the first time it sees the ad. In other words, when this ad ran in the 22nd district, it named Mr. Shaw instead of Mr. Sherwood. As Mr. Shaw suggested, these ads were intended to affect the election results in my favor, and I think they did have that effect.

13. The Florida Women's Vote project of EMILY's List also ran ads directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. A storyboard representing one of these ads, which I understand was run on television fairly heavily in the two months prior to the general election, is attached as Exhibit 4 to this Declaration. This ad ("FL/FLWV Shaw Says He Fights for Seniors") was run to increase the number of people voting for me in the election, and I think it had that effect.

14. Citizens for Better Medicare ran a massive number of broadcast "issue ads" directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. Storyboards representing five of these ads, which were run on television in the two months prior to the general election, are attached as Exhibit 5 to this Declaration. As I recall, Citizens for Better Medicare also ran a large number of "issue ads" against me on the radio in the final weeks of the campaign. The television ads were all focused on promoting Mr. Shaw by praising his record and position on the prescription drug benefit. Obviously this was an important issue in Congress in the years surrounding this election, and one in which the large drug companies PhRMA represents had a great interest, but the timing, placement and content of these ads show that their primary purpose was to insure that Mr. Shaw remained in Congress, so he could vote their way on the issue. The average age of residents in Florida's 22nd Congressional district is one of the highest in the nation, [8] so these ads had a big impact on the viewers. As explained

above, my campaign's tracking polls indicated that these Citizens for Better Medicare ads affected the election outcome in Mr. Shaw's favor. Older people, even Democrats, were confused. My response ads, saying that the ads attacking me were not true, could not match the frequency of the PhRMA ads or the Republican Party ads.

15. The Business Roundtable also ran ads directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. A storyboard representing a television ad the group ran frequently on television for Mr. Shaw in the final weeks of the general election is attached as Exhibit 6 to this Declaration. The storyboard for this ad ("BRT/Shaw From The Start"), the script of which actually names a different candidate because it is apparently a "cookie cutter" ad, features shots of babies. The ad mentions education and jobs in a general way, but it is meaningless except as an attempt to persuade voters that the candidate in question was generally on the side of children. It was intended to help elect Mr. Shaw.

16. The United States Chamber of Commerce also ran so-called "issue ads" directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. A storyboard representing a television ad that I understand the group ran on television against me in the final weeks of the general election is attached as Exhibit 7 to this Declaration. The storyboard for this ad ("KY/COC Jordan Scaring Seniors Rx"), which names a different candidate because it is apparently a "cookie cutter" ad, criticizes the candidate for her position on the prescription drug benefit. I believe this was not a huge ad buy, but running the ad would still allow the Chamber to let Mr. Shaw know that they had done something to help him survive the serious challenge he faced.

17. I appreciated the ads described above that were run by political parties and interest groups to assist my 2000 Congressional campaign, even though I had no advance knowledge [9] of what they would say or where they would

air. I understood them to be lawful and in compliance with FEC rules.

18. I support the restrictions in the new McCain-Feingold legislation on the use of soft money to affect federal elections through donations to parties and so-called "issue ads." In fact, I have worked for the passage of comparable state legislation here in Florida. Mr. Shaw, despite the help he received from Senator McCain, voted against the Shays-Meehan bill in 2002.

19. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

[BLOOM EXHIBIT 3-1]

CMR Ad Detector – CMAG Reports

BRAND: POL-CONGRESS+

TITLE: AFLCIO/Call Clay Shaw

COMMERCIAL: AFLCIO/Call Clay Shaw

LENGTH: 30

FRAMES: 7

[Frame 1 of 7]

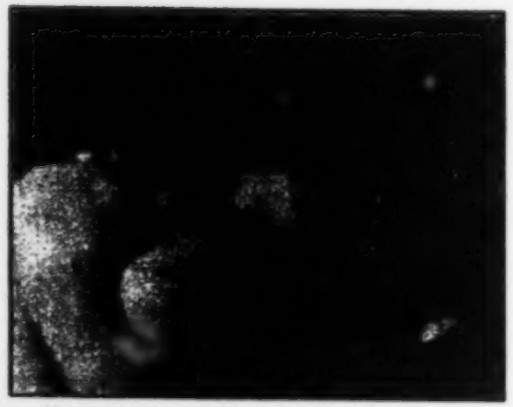
[Man]: " When you are lifting 70,000 lbs of castings a day and you do this for 24 years, you are going to hurt yourself. I had surgery on both hands.

[BLOOM EXHIBIT 3-1]

[2 of 7]

I will be in pain for the rest of my life." [Announcer]: Every year, tens of thousands of Americans

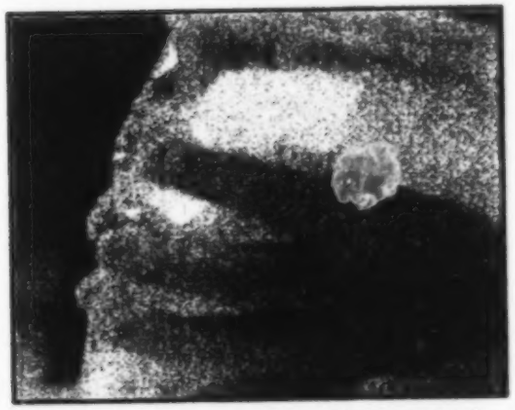
[3 of 7]



suffer permanent and crippling repetitive motion injuries on the job.

[BLOOM EXHIBIT 3-1]

[4 of 7]



Yet, Congressman Clay Shaw voted to block federal safety standards

[5 of 7]

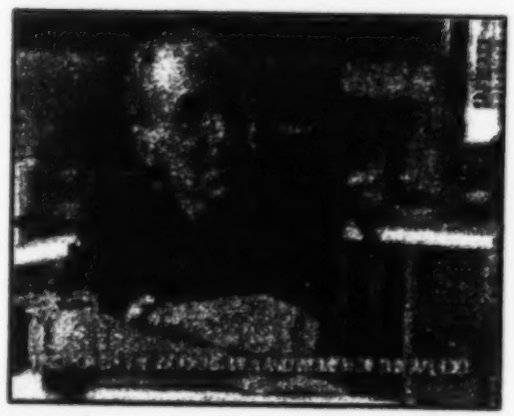
that would help protect workers from this risk. Tell Shaw his politics

[BLOOM EXHIBIT 3-1]

[6 of 7]

causes pain. [Man]: " We're all human beings. We need to help eachother so this stuff doesn't happen

[7 of 7]



to us."

[BLOOM EXHIBIT 3-2]

CMR Ad Detector – CMAG Reports

BRAND: AFL-CIO UNION+

TITLE: AFLCIO/Call Clay Shaw

COMMERCIAL: AFLCIO/Call Clay Shaw

LENGTH: 30

FRAMES: 7

[Frame 1 of 7]

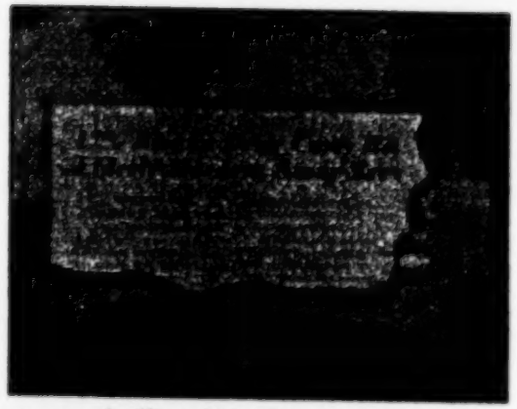
[Woman]: " When I think about getting older, it's not dying I worry about. It's living and

[BLOOM EXHIBIT 3-2]

[2 of 7]

being burried under a pile of medical bills that I can't pay for."
[Announcer]: Prescription drug costs

[3 of 7]



are exploding. Yet, Congressman Clay Shaw voted against guaranteeing

[BLOOM EXHIBIT 3-2]

[4 of 7]

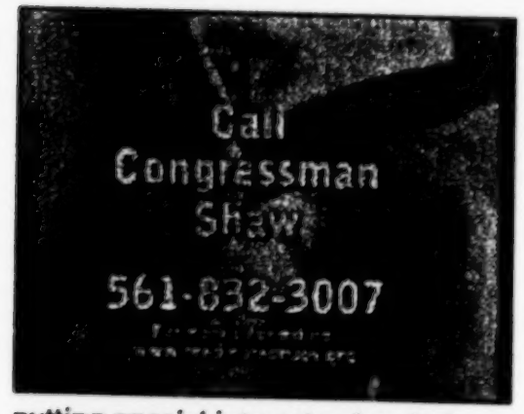
seniors prescription benefits under medicare and back to a private

[5 of 7]

insurance plan that will leave millions without coverage. Call Shaw. Tell him to quit

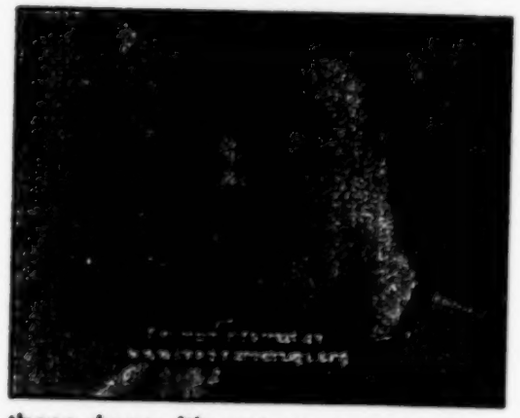
[BLOOM EXHIBIT 3-2]

[6 of 7]



putting special interests ahead of working families. [Woman]: " With the cost of

[7 of 7]



these drugs. It's very very scarey."

[BLOOM EXHIBIT 3-3]

CMR Ad Detector – CMAG Reports

BRAND: POL-UNKNOWN ST&LCL OFC+

TITLE: AFLCIO/Sherwood Sided With Drug Industry

COMMERCIAL: AFLCIO/Sherwood Sided With Drug Industry 1 of 1

LENGTH: 30

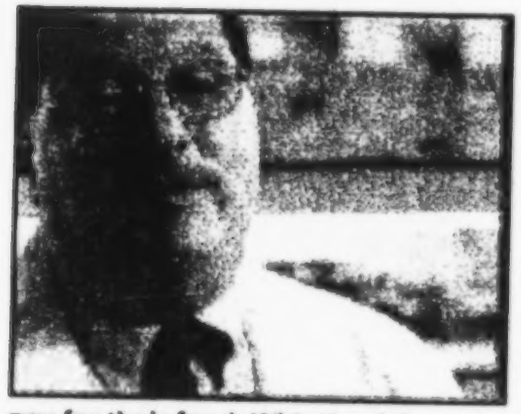
FRAMES: 7

[Frame 1 of 7]

[Weisman]: " The citizens today can't afford the medication. They come in and I know that they're skipping the medication so they can

[BLOOM EXHIBIT 3-3]

[2 of 7]



pay for their food. With the rising cost of medication today, it could wipe out

[3 of 7]

anybody at any time." [Announcer]: Yet, Congressman Don Sherwood sided

[BLOOM EXHIBIT 3-3]

[4 of 7]

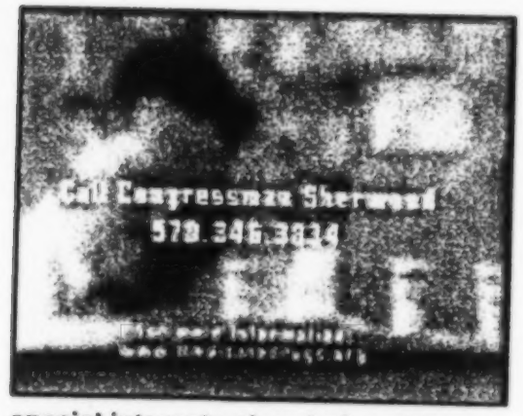
with the drug industry. He voted no to guaranteed medicare prescription benefits

[5 of 7]

that would protect seniors from runaway prices. Tell Sherwood. Quit putting

[BLOOM EXHIBIT 3-3]

[6 of 7]



special interests ahead of working families. [Weisman]: " Watching people walk away without

[7 of 7]

the medication they need takes a little out of me every day."

[BLOOM EXHIBIT 4-1]

CMR Ad Detector – CMAG Reports

BRAND: POL-CONGRESS+

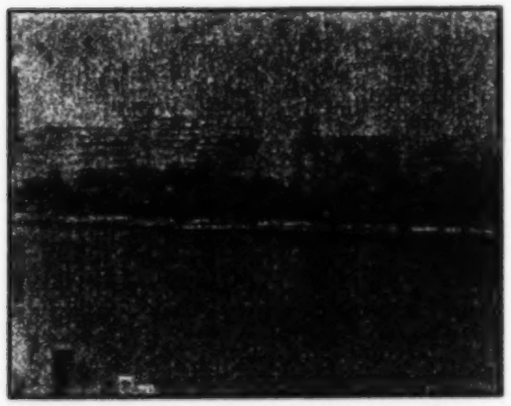
TITLE: FL/FLWV Shaw Says He Fights For Seniors

COMMERCIAL: FL/FLWV Shaw Says He Fights For Seniors 1 of 1

LENGTH: 30

FRAMES: 8

[Frame 1 of 8]



[Announcer]: In Florida, he says he fights for seniors, but Clay Shaw's Washington

[BLOOM EXHIBIT 4-1]

[2 of 8]

record tells another story. In Washington, Clay Shaw was

[3 of 8]

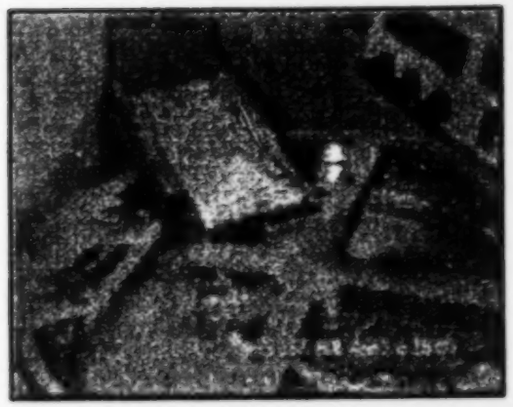
the architect of legislation to privatize Social Security and invest your

[BLOOM EXHIBIT 4-1]

[4 of 8]

guaranteed savings in dangerous stock market schemes, and

[5 of 8]



Clay Shaw voted to subsidize pharmaceutical and insurance companies, instead of providing

[BLOOM EXHIBIT4-1]

[6 of 8]

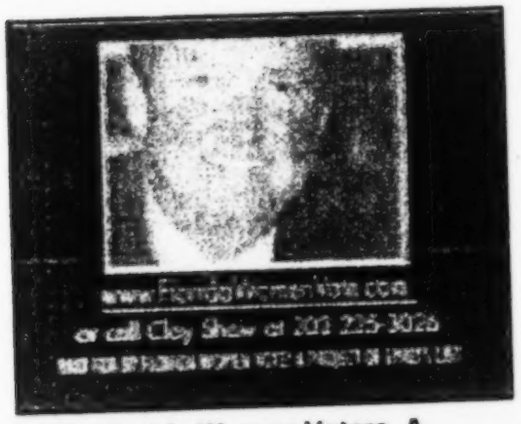
the guaranteed, affordable prescription drug coverage that seniors

[7 of 8]

should have. Here's how to learn more about Clay Shaw's Washington record.

[BLOOM EXHIBIT4-1]

[8 of 8]



[PFB: Florida Women Voters. A project of Emily's List]

[BLOOM EXHIBIT 5-1]

CMR Ad Detector – CMAG Reports

BRAND: CITIZENS/BETTER MEDICARE+

TITLE: CBM/FL Shaw Knows Rx Is Important

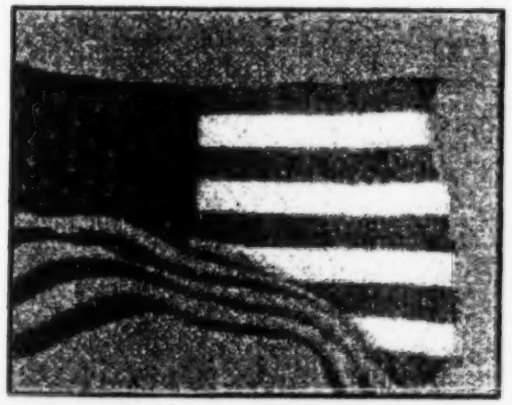
COMMERCIAL: CBM/FL Shaw Knows Rx Is Important

1 of 1

LENGTH: 30

FRAMES: 7

[Frame 1 of 7]



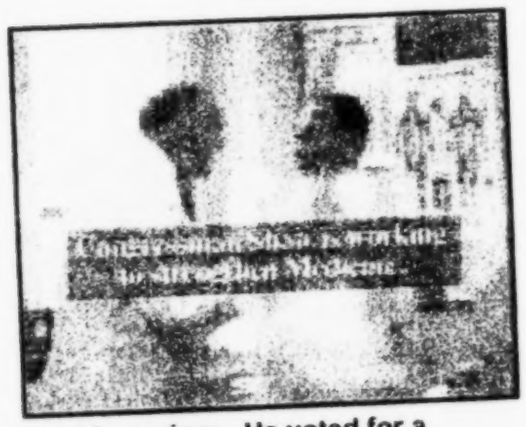
[Announcer]: Congressman Clay Shaw knows how important medicines are to seniors'

[BLOOM EXHIBIT 5-1]

[2 of 7]

health. That's why he's been working to strengthen and improve Medicare for

[3 of 7]



Florida seniors. He voted for a prescription drug plan that's

[BLOOM EXHIBIT 5-1]

[4 of 7]

affordable, reliable, and that offers seniors real choice when it

[5 of 7]

comes to their prescription medicine coverage. That's what seniors want

[BLOOM EXHIBIT5-1]

[6 of 7]

and that's what Congressman Clay Shaw wants for seniors too. Support Clay Shaw's

[7 of 7]

prescriptions for Florida seniors. [PFB: Citzens for Better Medicare]

[BLOOM EXHIBIT 5-2]

CMR Ad Detector – CMAG Reports

BRAND: CITIZENS/BETTER MEDICARE+

TITLE: CBM/PA Sherwood If You Don't Have Health

COMMERCIAL: CBM/ PA Sherwood If You Don't Have Health 1 of 1

LENGTH: 30

FRAMES: 7

[Frame 1 of 7]

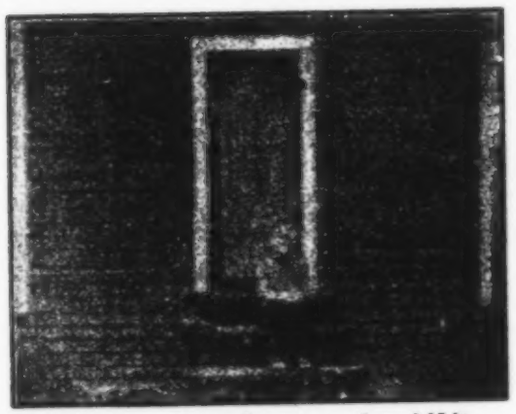
[Woman1]: "If you don't have health, you can't enjoy anything else. I paint, I write and I have my

[BLOOM EXHIBIT 5-2]

[2 of 7]

family. And I'm pretty stable with my cancer.

[3 of 7]



I would be struggling very hard if it weren't for

[BLOOM EXHIBIT 5-2]

[4 of 7]

medicines." [Announcer]: Congressman Don Sherwood is working to strengthen

[5 of 7]

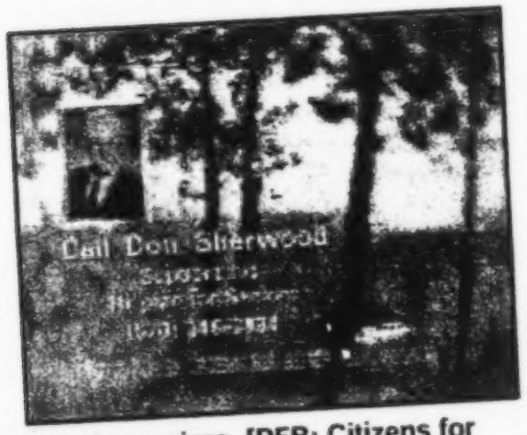
Medicare and provide a prescription drug benefit so all seniors can

[BLOOM EXHIBIT5-2]

[6 of 7]

get the medicines they need. Support Don Sherwood's prescription drug

[7 of 7]



plan for seniors. [PFB: Citizens for Better Medicare]

[BLOOM EXHIBIT 5-3]

CMR Ad Detector – CMAG Reports

BRAND: CITIZENS/BETTER MEDICARE+

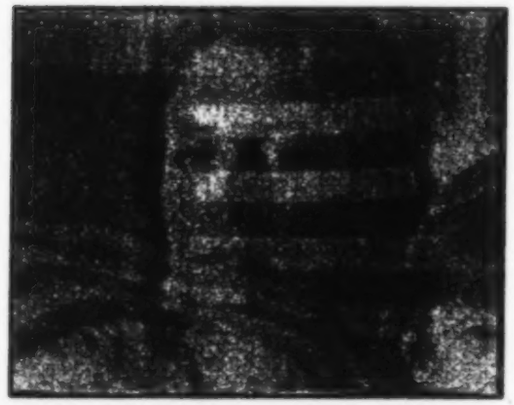
TITLE: FL/CBM Clay Shaw

COMMERCIAL: FL/CBM Clay Shaw 1 of 1

LENGTH: 30

FRAMES: 7

[Frame 1 of 7]



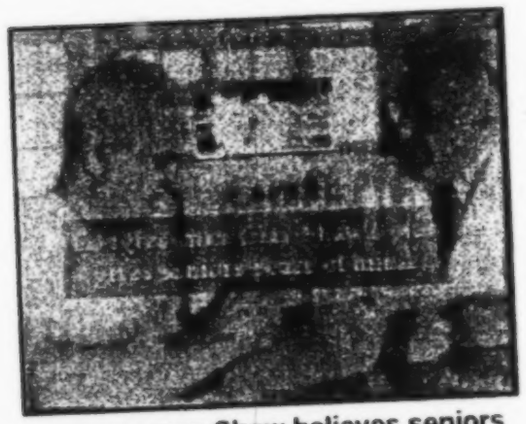
[Announcer]: Congressman Shaw believes Florida seniors deserve the best health care so he is fighting to improve

[BLOOM EXHIBIT 5-3]

[2 of 7]

Medicare with an affordable prescription drug plan that gives seniors peace of mind.

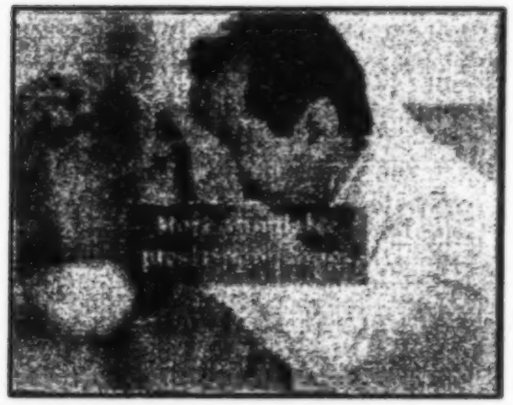
[3 of 7]



Congressman Shaw believes seniors should have real choices because he

[BLOOM EXHIBIT 5-3]

[4 of 7]



recognizes that every senior has different health care needs. Real choice.

[5 of 7]

Quality. Affordability. Congressman Shaw has the right plan

[BLOOM EXHIBIT5-3]

[6 of 7]

to bring Florida's seniors peace of mind. Support Clay Shaw's

[7 of 7]

prescription for Florida's seniors.

[BLOOM EXHIBIT 5-4]

CMR Ad Detector – CMAG Reports

BRAND: POL-CONGRESS+

TITLE: FL/CBM Foley Cancer Rx

COMMERCIAL: FL/CBM Foley Cancer Rx 1 of 1

LENGTH: 30

FRAMES: 7

[Frame 1 of 7]

[Woman]: "People who have cancer are looking for miracles. At this point it is my

[BLOOM EXHIBIT 5-4]

[2 of 7]

faith and support from my family and my friends.

[3 of 7]

And then there is the medicine." [Announcer]: Congressman Mark Foley is working

[BLOOM EXHIBIT 5-4]

[4 of 7]

to add a prescription drug benefit to Medicare. And to make sure medicines are

[5 of 7]

available for every senior who needs them. Call Congressman Mark

[BLOOM EXHIBIT5-4]

[6 of 7]

Foley. [Woman]: "Without the medicine I would not

[7 of 7]

be where I am." [PFB Friends of Bill Redmond]

[BLOOM EXHIBIT 5-5]

CMR Ad Detector – CMAG Reports

BRAND: POL-CONGRESS+

TITLE: FL/CBM Shaw I Want Rx Plan

COMMERCIAL: FL/CBM Shaw I Want Rx Plan 1 of 1

LENGTH: 30

FRAMES: 7

[Frame 1 of 7]

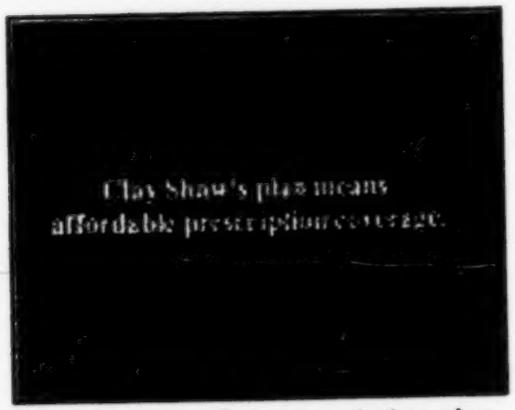
[Man1]: "I want the medicines I need."

[BLOOM EXHIBIT 5-5]

[2 of 7]

[Woman]: "I want a prescription plan that gives me real choice."

[3 of 7]



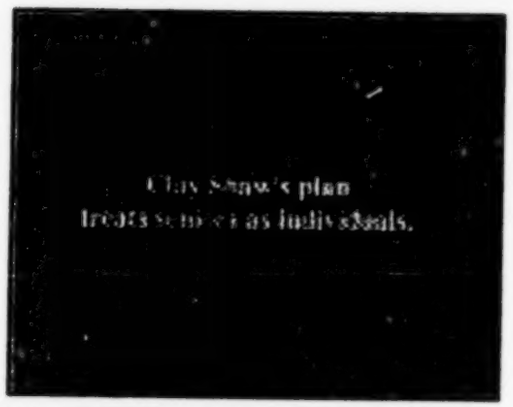
[Man2]: "We want a prescription plan that treats us as

[BLOOM EXHIBIT 5-5]

[4 of 7]

individuals."

[5 of 7]



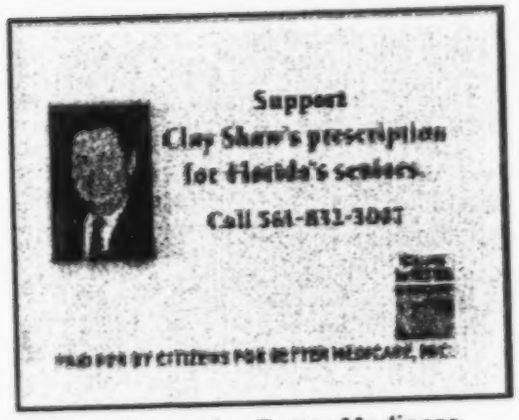
[Announcer]: Florida seniors want a Medicare prescription plan that gives them choice,

[BLOOM EXHIBIT5-5]

[6 of 7]

quality, and affordability. And that's what Congressman Clay Shaw wants for seniors too.

[7 of 7]



[PFB: Citizens for Better Medicare, Inc]

[BLOOM EXHIBIT 6-1]

CMR Ad Detector – CMAG Reports

BRAND: BUSINESS ROUNDTABLE ORG+

TITLE: BRT/Shaw From the Start

COMMERCIAL: BRT/Shaw From the Start 1 of 1

LENGTH: 30

FRAMES: 7

[Frame 1 of 7]

[Announcer]: From the start, everybody needs a helping hand and it's up to all of us to make sure they get it. Our children are our future.

[BLOOM EXHIBIT 6-1]

[2 of 7]

And their future should include the very best education possible.

[3 of 7]

A meaningful job and an America opening foreign

[BLOOM EXHIBIT 6-1]

[4 of 7]

markets around the globe, spreading peace and prosperity.

[5 of 7]

That's what Congressman David Minge has been fighting for.

[BLOOM EXHIBIT6-1]

[6 of 7]

Call him and thank him for fighting for us and them.

[7 of 7]

[PFB: Business Round Table]

[BLOOM EXHIBIT 7-1]

CMR Ad Detector – CMAG Reports

BRAND: US CHAMBER OF COMMERCE+

TITLE: KY/COC Jordan Scaring Seniors Rx

COMMERCIAL: KY/COC Jordan Scaring Seniors Rx

1 of 1

LENGTH: 30

FRAMES: 8

[Frame 1 of 8]

[Man]: "I heard Eleanor Jordan supports this White House prescription drug plan for seniors.

[BLOOM EXHIBIT 7-1]

[2 of 8]

What happens to the good prescrption drug plan that I already have through my company

[3 of 8]

retirement? They say I could lose it, and be left with

[BLOOM EXHIBIT 7-1]

[4 of 8]

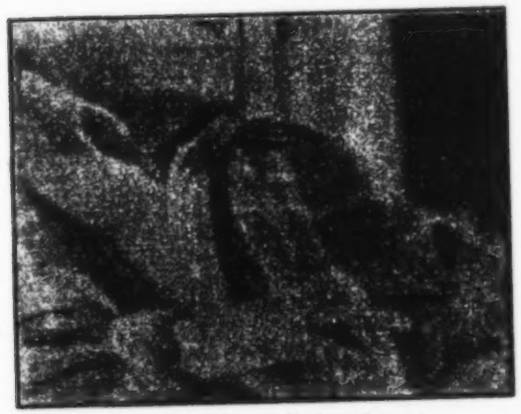
this government plan that may cost more and have fewer benefits.

[5 of 8]

And whose gonna run this big government plan. Will some bureaucrat be tellling

[BLOOM EXHIBIT 7-1]

[6 of 8]



me what kind of medicine I can have?" [Announcer]: Tell Eleanor Jordan

[7 of 8]

to stop scaring seniors. Stop supporting the White House prescription drug plan. [PFB U.S. Chamber of Commerce]

[BLOOM EXHIBIT 7-1]

[8 of 8]

Declaration of Michael Boos

* * *

[4]

7. As pointed out by Walter J. Olson, one of the plaintiffs' expert witnesses in this action (Declaration of Walter J. Olson, ¶¶ 7-15, 17-60, 116), and as further confirmed in paragraph 8 of this Declaration below, these FEC filing and reporting requirements with respect to SSFs are quite burdensome, and I can confirm that these burdens have been, and continue to be, extraordinary, unduly harmful burdens for CUPVF.

8. As evidence of the licensing scheme established and perpetuated by the FECA/BCRA, prior to engaging in any "federal election" activities, and as a government-imposed condition for engaging in such activities, CUPVF was required to file with the FEC its initial Statement of Organization referenced above. In addition, CUPVF has been required by the government to maintain its records in such a way that it is able to prepare and file with the FEC a number of reports in each year of its existence, as well as to spend the time, effort, [5] and money to actually prepare and file those reports. The filing and reporting requirements, which I have undertaken and supervised on behalf of CUPVF, include--together with numerous other FECA-mandated requirements and restrictions--the following:

- CUPVF was required to include in its name the full name of its connected organization. (11 CFR 100.6(a) and 102.14(c).)
- CUPVF was required to appoint a treasurer of the SSF before accepting contributions or makes expenditures. (11 CFR 102.7(a) and (b).)
- The treasurer of CUPVF was required to prepare and file the initial FEC form 1 (Statement of Organization) for the CUPVF, which includes the following information (11 CFR 102.2):

(i) name and address of the SSF;
(ii) electronic mail address if such an address exists and if the committee is required to file electronically;
(iii) Internet address of the committee's official web site, if such a web site exists;
(iv) name and address of the connected organization;
(v) type of connected organization;
(vi) name and address of the custodian of records;
(vii) name and address of the treasurer; and
(viii) name and mailing address of banks or other depositories.

- The initial FEC Form 1 was filed with the FEC, as required. (11 CFR 105.4)
- A copy of the FEC Form 1 for CUPVF was filed, as required, with the designated State officer of Virginia. (11 CFR 108.1.)
- After the original, executed FEC Form 1 was filed with the FEC, the FEC assigned an Identification Number (C00295527) to CUPVF. (11 CFR 102.2(c).)
- CUPVF was required to prepare and file an amendment to its registration statement (FEC Form 1) with the FEC within 10 days after there [sic] any change or correction to the information contained in the registration statement, which it did on July 27, 1999, to reflect a new address and depository. (11 CFR 102.2(a)(2).)
- CUPVF was required to designate as its campaign depository or depositories only state banks, federally charted depository institutions (including national [6]

banks), or depositories insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration. (11 CFR 103.2.)

- CUPVF has been required to maintain at least one checking account or transaction account at one of its depositories. (11 CFR 103.2.)
- CUPVF has had to engage and retain a treasurer responsible for ensuring that all receipts are deposited in a designated depository account identified in CUPVF's registration statement within 10 days of receipt, or are returned to the contributor without being deposited within 10 days of receipt. (11 CFR 103.3(a).)
- CUPVF has been prohibited from receiving contributions or making expenditures when there is a vacancy in the office of treasurer if the committee does not have an assistant treasurer. (11 CFR 102.7.)
- CUPVF has been required to make all disbursements by check or similar draft drawn on accounts established at its designated depository or depositories, except for expenditures of $100 or less made from a petty cash fund maintained pursuant to 11 CFR 102.11. (11 CFR 102.10.)
- CUPVF has been required to maintain a treasurer responsible for ensuring that excessive contributions are not deposited in an account depository of CUPVF (11 CFR 103.3(b).)
- Before qualifying as a multicandidate committee, CUPVF was permitted to make contributions only up to $1,000 per election to a candidate for federal office, including a candidate for the office of Representative, Senator, or President of the United States. (2 U.S.C. § 441a(a).)
- After qualifying as a multicandidate committee *(i.e.*, when it (i) received contributions from more than 50

persons, (ii) had been registered with the FEC for at least six months, and (iii) had made contributions to at least five federal candidates), CUPVF's treasurer filed a completed, executed FEC Form 1M (Notification of Multicandidate Status) with the FEC. (2 U.S.C. § 441a(a) and 11 CFR 100.5(e)(3) and 102.2(a)(3).)

- After qualifying as a multicandidate committee and filing its FEC Form 1M with the FEC, CUPVF was prohibited from giving more than $5,000 per election to a candidate for federal office (2 U.S.C. § 441a(a) and 11 CFR 110.2(b).) It is my understanding that the BCRA did not increase that limit, as it did for individual contributors.

[7]

- As a qualified multicandidate committee, CUPVF has been required to give each recipient federal candidate or campaign committee written notification that CUPVF has qualified as a multicandidate committee when it has made a contribution to such federal candidate or campaign committee. (11 CFR 110.2(a)(2).)
- CUPVF has been limited in soliciting contributions to CUPVF at any time from Citizens United's restricted class, which includes (i) its noncorporate members (such as individuals or partnerships), (ii) its executive and administrative personnel, and (iii) the families of both groups. (11 CFR 114.7.)
- CUPVF has been able to solicit contributions to the SSF no more than twice a year from employees of Citizens United who are nonexecutive and nonadministrative personnel and their families. (11 CFR 114.6.)
- CUPVF has been able to accept contributions of no more than $5,000 in the aggregate per calendar year from a contributor. (11 CFR 110.1(d).)

- If any contribution received by CUPVF exceeded the limit, the treasurer was required to return or refund the excessive amount unless the following procedure were followed within 60 days of receipt of the excessive contribution by the treasurer: the excessive amount of the contribution may be retained by the SSF, if, within 60 days of receipt by the treasurer, (i) the excessive amount was reattributed to another individual, such as a joint account holder, by obtaining signed written authorizations from each person making the contribution pursuant to 11 CFR 110.1(k)(3), and (ii) the treasurer informs the individual making the contribution that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution. (11 CFR 110.1(k)(3).)
- CUPVF may not accept contributions made from the general treasury funds of corporations, labor organizations, or national banks. (11 CFR 114.2(a) and 114.2(b).)
- CUPVF may not accept contributions made by federal government contractors. (11 CFR 115.)
- CUPVF may not accept contributions by foreign nationals as defined in 11 CFR 110.4(a)(4). (11 CFR 110.4(a).)
- CUPVF may not accept contributions made by one person in the name of another. (11 CFR 110.4(b).)

[8]

- CUPVF may accept neither cash contributions of more than $100, nor anonymous cash contributions of more than $50. (11 CFR 110.4(c)(1), 110.4(c)(2) and 110.4(c)(3).)
- The treasurer of CUPVF is responsible for making his best efforts in determining the legality of a contribution. (11 CFR 103.3(b)(1).)

- An SSF registered with the FEC, such as CUPVF, must file periodic FEC Form 3X reports with the FEC until it has terminated its registration and reporting obligations by filing a termination report. (11 CFR 104.5(c).)
- As an SSF registered with the FEC, CUPVF must file FEC Form 3X reports on either a quarterly or monthly schedule. During a nonelection year, in which there are no regularly scheduled federal elections, a quarterly filer is required to file two semiannual FEC Form 3X reports: (i) a mid-year report (January 1 through June 30); and (ii) a year-end report (July 1 through December 31). During an election year, an SSF which is a quarterly filer is required to file the following FEC Form 3X reports (11 CFR 104.5(c)):
  - (i) April 15 Quarterly;
  - (ii) July 15 Quarterly;
  - (iii) October 15 Quarterly;
  - (iv) 12-Day Pre-General (if appropriate);
  - (v) 30-Day Post-General;
  - (vi) January 31 Year End; and
  - (vii) 12-Day Pre-Election (*e.g.*, primary, runoff) reports (if appropriate).
- As a monthly filer, CUPVF has been, and is, required to file the following FEC Form 3X reports each year (11 CFR 104.5(c)):
  - (i) February 20 Monthly;
  - (ii) March 20 Monthly;
  - (iii) April 20 Monthly;
  - (iv) May 20 Monthly;
  - (v) June 20 Monthly;
  - (vi) July 20 Monthly;
  - (vii) August 20 Monthly;
  - (viii) September 20 Monthly;
  - (ix) October 20 Monthly;

(x) 12-Day Pre-General (election years only, if appropriate);
(xi) 30-Day Post-General (election years only);
(xii) November 20 Monthly (nonelection years only);
(xiii) December 20 Monthly (nonelection years only);
(xiv) January 31 Year End.

[9]

- As an SSF which is a multicandidate committee, CUPVF has been required to indicate that it has qualified as a multicandidate committee on the summary page of each FEC Form 3X (Report of Receipts and Disbursements) report filed with the FEC.
- When CUPVF files its FEC 3X reports with the FEC, it is required to simultaneously file copies of the summary page, detailed summary page and the appropriate Schedule B (Itemized Disbursements) pages of the FEC Form 3X report with the designated State officer of the State in which CUPVF supported or opposed federal candidates during the reporting period, unless that State has received a waiver from the requirement to maintain copies of FEC statements and reports. (11 CFR 108.1.)
- An SSF may change its filing schedule (*e.g.*, monthly to quarterly) only once per calendar year. (11 CFR 104.5(c).)
- As an SSF, CUPVF must file a 24-hour report, signed by the treasurer under penalty of perjury, when it makes independent expenditures aggregating $1,000 or more after the 20th day but more than 24 hours before the day of an election. The notice must be received by the FEC within 24 hours after the expenditure is made. The notice must include all the information required on the Schedule E (Itemized Independent Expenditures) of FEC Form 3X, including

CUPVF's name and FEC Identification Number. Each independent expenditure which, by itself or when added to other independent expenditures made to the same payee during the same calendar year, exceeds $200 must be itemized, including the following information (11 CFR 104.3(b)(3)(vii)(B), 104.4(b) and 104.5(g)):

(i) name and address of the payee;
(ii) date of expenditure;
(iii) amount of expenditure;
(iv) purpose of expenditure;
(v) name of the federal candidate who is supported or opposed; and
(vi) office sought by the federal candidate.

- An SSF may file a termination report at any time, provided that (i) it no longer intends to receive contributions to make expenditures, and (ii) it does not have any outstanding debts or obligations. (11 CFR 102.3)
- As an SSF, CUPVF is required to file hard copy reports and other documents, such as FEC Form 3X and amendments to FEC Form 1, with the FEC, unless it receives contributions or makes expenditures in excess of $50,000 in a calendar year, or has "reason to expect to exceed" $50,000 in contributions or expenditures in a calendar year. (11 CFR 104.18(a).)

[10]

- Beginning with the reporting periods that start on or after January 1, 2001, CUPVF is required to file reports, such as FEC Form 3X and amendments to FEC Form 1, electronically with the FEC, if its combined total contributions or combined total expenditures exceed, or "have reason to expect to exceed," $50,000 in a calendar year. An SSF that is not required to file electronically may choose to file its reports in an electronic format. (11 CFR 104.18)

- CUPVF's treasurer is required to keep copies of each registration statement (FEC Form 1), FEC Form 3X report and other documents (*e.g*, 24-hour report of independent expenditures) for three years after they are filed. (11 CFR 102.9(c) and 104.14(b).)
- CUPVF's treasurer is required to keep records and accounts of all contributions received by or on behalf of CUPVF, and of all disbursements made by or on behalf of CUPVF, for three years after the report to which such records and accounts relate is filed. (11 CFR 102.9)
- CUPVF's treasurer is required to ensure that the contribution records identify each contribution: (i) of more than $50 by amount, date of receipt, and donor's name and address; and (ii) of more than $200 by amount, date of receipt, and donor's name, address, occupation, and employer (11 CFR 102.9(a).)
- According to the FEC, CUPVF's treasurer is personally responsible for carrying out the following (11 CFR 103.3 and 104.14(d)):

  (i) filing complete and accurate reports and statements with the FEC on time;

  (ii) signing all reports and statements filed with FEC;

  (iii) depositing receipts in the committee's designated bank within 10 days;

  (iv) authorizing expenditures or appointing an agent (either orally or in writing) to authorize expenditures;

  (v) monitoring contributions to ensure compliance with the law's limits and prohibitions; and

  (vi) keeping the required records of receipts and disbursements.

These and other FEC-related requirements are extremely burdensome -- I estimate that normal FEC-related functions, such as complying with the FEC filing and reporting requirements, alone have required at least three hours of my time per month, year round, and this does not include the time necessary for CUPVF's treasurer to review and sign the reports, nor does it [11] include the time of Citizens United's or CUPVF's bookkeepers or any other individual. Nor does it include the time involved in less regular FEC-related matters, including my own continuing study of FEC requirements, or counseling Citizens United and CUPVF with respect to election law matters, or FEC proceedings such as Matters Under Review ("MURS"), which are discussed in the following paragraph.

9. In the past six years, CUPVF and its treasurer have been involved as respondents in several MURS, even where no complaint alleged illegal activity of CUPVF or its treasurer, and CUPVF and its treasurer were called upon to justify conduct that I believe any reasonable person would deem legal and in compliance with FEC regulations and the law. Defending CUPVF (and CUPVF's treasurer) in these MURS--all of which were dismissed (without apology) against CUPVF and its treasurer--was time-consuming and expensive. Furthermore, during the course of these MURS, I became aware of a number of policies and/or practices of the FEC in conducting its MURS, including the following:

- The FEC does not permit either respondents or counsel for respondents in MURS to appear before the FEC at any stage of the proceeding.
- The FEC General Counsel's office presents its own views as well as the views of respondents in MURS to the FEC in closed hearings which the respondent, respondent's counsel and the public may not attend.
- When the deposition of a respondent in a MUR is taken by the FEC, the FEC policy is to require the respondent to sign the deposition at the offices of the FEC, or at the offices of a reporting company, and in neither case is the respondent allowed to take with

him a copy of the deposition, or to copy the deposition.

- The FEC will not permit a respondent to take possession of a copy of his own deposition even if the respondent is the only respondent and he waives his right to confidentiality under FECA.

[12] It has been my experience, on behalf of Citizens United and CUPVF, that the policies and procedures of the FEC, including those in MURS as set forth above, has worked to the tremendous, unfair disadvantage of the citizenry, including CUPVF and its treasurer, and has resulted consistently in an extremely unnecessary waste of time, effort, and expense, in litigating MURS against the FEC. The MURS referenced above involving CUPVF and its treasurer consumed, conservatively, more than 100 hours of time of CUPVF and its staff, and cost CUPVF or Citizens United many thousands of dollars in attorney's fees. These are but examples of the tremendous burden felt by organizations and individuals involved in the morass of needless, counter-productive, and I believe unconstitutional regulation spawned by the FECA, and now the FECA as amended by the BCRA.

10. The FECA/BCRA regulatory scheme is daunting, from a compliance standpoint. Without constant vigilance and careful recordkeeping and bookkeeping, for example, it would not be difficult to run afoul of the recordkeeping and reporting requirements in any given year, particularly during active periods, such as just prior to an election. As Citizens United's FEC reports indicate (see paragraph 7, below, and Exhibit B hereto), its gross contributions have not exceeded $50,000 per year, and they are normally substantially less (*e.g*, $36,970 in 2000, $41,489.25 in 1999, $16,633 in 1998). Yet I would estimate the actual cost of maintaining and operating CUPVF with respect to FEC compliance matters at between $5,000 to $12,000 per year. Again, this is relative to regular compliance matters, and does not include extraordinary matters such as MURs. For the activities of an SSF that raises and expends substantially less than $50,000 for year,

the FECA requirements and FEC regulations [13] implementing them, costing a small SSF like CUPVF up to twenty percent or more of its yearly receipts, are unconscionably and unconstitutionally burdensome and overbearing. 11. The burdens and restrictions imposed upon CUPVF by the FECA/BCRA, which Citizens United and Citizens United Political Victory Fund contend are unconstitutional, include the following: as a political committee CUPVF is required to comply with statutorily-imposed licensing regulations, editorial control, and discriminatory economic burdens, to wit: (i) registration with the FEC as a political committee, as required by 2 U.S.C. Section 433, in order to be permitted to engage in any communicative activity expressly advocating the election or defeat of a candidate for federal office; (ii) the filing of periodic reports, open to the public, of receipts and disbursements, as required by 2 U.S.C. Section 434, in order to be permitted to continue to engage in such communicative activity; and (iii) compliance with limits upon individual financial contributions, as specified by 2 U.S.C. Sections 441a, 441d, 441f, and 441g, and reporting to the FEC the names, addresses, employers, and occupations of contributors, as required by 2 U.S.C. 434, in order to convey CUPVF's candidate preferences in a federal election. These are substantial burdens, in terms of time and effort expended, out-of-pocket expense and employee salaries, and distraction from the substantive activities of CUPVF (as well as Citizens United itself), that greatly interfere with the free exercise of the First Amendment rights of Citizens United and CUPVF, and inhibit the ability of CUPVF to carry out its activities with respect to federal elections.

* * *

[3 PCS CDP 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, *et al*. Defendants.	Civil Action No.: 02-CV-0582 (CKK, KLH, RJL)
CALIFORNIA DEMOCRATIC PARTY, *et al*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, *et al*. Defendants.	Civil Action No.: 02-CV-0875 (CKK, KLH, RJL) CONSOLIDATED ACTIONS

[CORRECTED] DECLARATION OF KATHLEEN BOWLER

I, KATHLEEN BOWLER, hereby swear and depose as follows, based on my own personal knowledge:

1. I am the Executive Director of the California Democratic Party ("CDP" or "Party"). This is the highest staff-level position in the Party. As Executive Director, I am the [3 PCS CDP 2] chief administrative officer and I run the day-to-day operations of the Party under the supervision of elected State Party Chair, Art Torres. I have served as Executive Director since 1995. Before that, I worked on and off for the party in various capacities beginning in 1980. I have previously been

a Co-Chair of the CDP Rules Committee, and have worked with the Party's mail program extensively over the years. I am familiar with the Party's income and expenditures, and the reporting requirements imposed by both California law and Federal law. I am also familiar with the Party's voter registration programs, its Get-Out-The-Vote (GOTV) activities, its generic party-building activities, and its public communications (including its mail program).

2. CDP is an unincorporated association of approximately seven million members who have joined together to advance common political beliefs. To advance those beliefs, CDP performs many functions, among them providing financial and material support to federal, state and local candidates, recruiting and training those candidates, taking positions on public issues (including state and local ballot measures) and publicizing those positions, engaging in voter registration, get-out-the-vote and generic party-building activities, and maintaining an administrative staff and administrative structure to support these goals and activities and to comply with extensive state and federal regulation. CDP is financially supported by contributions from its members and other supporters. At its core, CDP is made up of persons who share certain political views and seek to join together to express those views through active participation in the political process.

STRUCTURE AND ORGANIZATION OF CDP

3. CDP is the duly authorized and officially recognized Democratic Party of the State of California. Its organization, operations and functions are set out in California Elections [3 PCS CDP 3] Code Sections 7050 *et seq*. The Party is required by these provisions to govern itself through a Democratic State Central Committee (DSCC). The DSCC is made up of about 2,710 members, about 849 of whom are

elected by the 58 county central committees. Other members serve as a result of their status as State or Federal elected officials, appointees of these officials, nominees of the Party, and members of the Democratic National Committee from California, as well as elected representatives of 80 Assembly District Committees (subunits of the Party). The DSCC meets as a whole once a year in the Party's annual convention. During the rest of the year the Party governs itself through an Executive Board. The Executive Board has about 315 members and meets two to three times a year. Many State and Federal elected officials as well as all members of the Democratic National Committee from California are members of the Executive Committee.

4. The California Elections Code also provides for the Democratic County Central Committees. Members of the County Central Committees are elected at each statewide primary election. All members of the Party serving as State Senators, members of the State Assembly, members of Congress, or the Party's nominees for those offices serve as ex-officio members of their County Central Committee. On a more local level, the CDP By-laws provide for Assembly District Committees ("AD Committees"). These committees elect delegates to the State Central Committee and are the district-level organizational blocks of the Party. Both the County Central Committees and AD Committees are primarily involved in local voter registration, get-out-the-vote or similar grass-roots activities, and act as liaisons with the campaign organizations of Democratic candidates in that area. [3 PCS CDP 4]

5. CDP is integrally related to the Democratic National Committee (DNC), which is the governing body of the Democratic Party of the United States. Under its Charter, the DNC is made up principally of the State Chair and highest ranking officer of the opposite gender from each recognized

state Democratic Party, and of 200 additional members apportioned to, and selected by, the state parties, based on a formula taking into account population and Democratic voting strength. Thus, CDP's Chair and Vice Chair are members of the DNC by virtue of their state party offices; and CDP has elected twenty other persons to represent CDP on the DNC. In addition, the chairman of the CDP Art Torres, has been elected by the DNC, on the recommendation of the DNC chair, to serve on the DNC Executive Committee. The DNC often works with CDP in planning and implementation of strategy and operations to elect Democrats to all levels of office and in the dissemination of the Democratic Party's message. Members of the DNC representing the CDP attend regular meetings of the DNC, as well as training sessions, regional caucuses and numerous other meetings and events.

6. CDP has a core staff of approximately 24 people during non-election years. Those employees are divided into six divisions: Accounting, Administrative, Finance (which includes fundraising), Party Services (which includes our conventions and Executive Board meetings), Political/ Communications, and Research. The Party maintains year-round offices in two locations: Sacramento and Los Angeles. The cost of maintaining the offices and staff, apart from the costs of specific activities, is substantial. It includes not only staff costs, but also related expenses such as health and pension benefits, and workers compensation, as well as rent, utilities, legal fees, general liability insurance, printing, office equipment and similar overhead expenses. Many of these expenses are not directly related to election activity and are typical of [3 PCS CDP 5] any large membership organization. Like other organizations, we hold conferences and meetings, distribute literature that describes the Party's goals and principles, respond to member inquiries, and issue press releases.

7. CDP's regular and ongoing operating expenses,

including fundraising expenses, between 1997 and 2000 ranged between $2.1 million and $3 million. These figures do not include convention costs, which have typically been several hundred thousand dollars annually. As explained further below, these costs cannot be reduced without significantly impairing the Party's ability to perform its core functions.

CDP'S PROGRAMMATIC ACTIVITIES

8. In addition to ongoing overhead and administrative costs, CDP makes expenditures for a range of activities in furtherance of its ideological goals. I will discuss some of these activities in more detail below but, in general, we support the Party's candidates at the national, State and local level; we support or oppose ballot measures at the State or local level that reflect the Party's ideology; we engage in extensive voter registration activities, GOTV activities, and generic party-building communications. We also recruit and train candidates, and provide communications, services and activities for our membership (such as party literature, press releases, and convention activities). The most significant part of CDP's activities, both in terms of time and money, is its support of State and local candidates, and activities such as voter registration and GOTV, that are essential to the election of those candidates.

9. CDP maintains a Federal committee that is registered with the Federal Election Commission ("FEC"). It is required to comply with the Federal contribution limits and reporting requirements, and it has a Federal account which is limited to contributions received within the [3 PCS CDP 6] Federal limits ($5,000 per contributor per year). In accordance with Federal law, this account does not include any contributions from corporations or labor unions.

10. I have reviewed the Federal contribution figures

since 1995. The amount of Federal money raised through contributions has been relatively constant. For example, we raised $4,316,528 in the 1995-96 cycle; $4,076,870 in the 1997-98 cycle; $4,837,967 in the 1999-00 cycle; and $3,455,887 in the 2001-02 cycle (as of June 30). These are Federal contributions raised directly by CDP; these figures do not include any transfers from other party committees or candidates. Exhibit A illustrates Federal contributions during these cycles. These numbers reflect a substantial effort over the years to raise Federal money; even with increased efforts, I believe it would be exceedingly difficult to raise substantially more Federal money.

11. CDP is also registered as a political committee in accordance with California law, and is required to comply with California law as well as Federal law with respect to its campaign activities. Its non-Federal campaign activities are subject to direct regulation by the Fair Political Practices Commission, and it regularly files reports of all its receipts and expenditures with the California Secretary of State. California law was changed significantly by the adoption of Proposition 34, a comprehensive campaign finance measure, in November, 2000. Under Prop. 34, contributions to candidates by individuals, committees or entities other than political parties are limited: $3,000 to state legislators, $5,000 to statewide candidates other than Governor, and $20,000 to Governor. ("Small contributor" committees may give slightly more.) Contributions by political parties to candidates are not limited, although they count toward the voluntary spending limits, if a candidate has accepted such limits. Expenditures made by a political party on behalf of a candidate are also unlimited, but they do not count toward the spending limits. As [3 PCS CDP 7] a practical matter, this means that if the Party sends out a mailer endorsing a candidate that costs $2,500 that amount does not count against the candidate's limits, but if the Party gives a $2,500 contribution to the same candidate, it will count

against those limits. Contributions to political parties for the purpose of making contributions to state candidates are limited to $25,000 per year per contributor; contributions for other purposes (such as administrative and overhead costs, voter registration, generic GOTV and support of ballot measures) are not limited. Contributions to the political parties are not limited as to the source (i.e., corporations and unions may contribute).

12. Consistent with its State and local focus, CDP has always raised more non-Federal money than Federal money. These amounts have also been relatively constant over the past four cycles. In the 1995-96 cycle, we raised $12,991,251; in the 1997-98 cycle, we raised $15,957,831, in the 1999-00 cycle, we raised $15,617,002; for the 2001-02 cycle, we have raised $13,928,496 through June 30. I would expect the final figures for this cycle to be somewhat higher than 1999-00. Again, this is money raised directly by CDP; these figures do not include any transfers from other party committees. This is money that we have used to fund our State and local activities. Exhibit A also illustrates non-Federal income over these cycles.

13. In the past, the Party has placed contributions that meet the Federal limits as to amount and source into its Federal account. Other contributions, representing a substantial majority of the Party's income, have been placed in its non-Federal accounts. The Federal account pays for direct contributions to Federal candidates, as well as expenditures coordinated with a Federal candidate as permitted by federal law. It would also be used for independent expenditures in support of a Federal candidate (although I am only aware of one such [3 PCS CDP 8] expenditure since 1995). The non-Federal accounts would be used for direct contributions to State or local candidates, as well as coordinated or independent expenditures made on their behalf. There are 120 legislative officers, 8

statewide elected officers, and 4 members of the State Board of Equalization (elected by district). In addition, there are elections for judicial office and local office, and ballot measures at both the State and local level.

14. One of the Party's most significant non-Federal expenses is its direct mail program in support of its endorsed non-Federal candidates and ballot measures. CDP typically spends $7-8 million per cycle in non-Federal funds on its mail program in support of its non-Federal candidates. Obviously, the majority of our non-Federal contributions (approximately ($13-16 million per cycle) goes into this program.

15. The costs of certain activities, which have been construed by the FEC since about 1990 as having an effect on both Federal and non-Federal elections, are "allocated" between our Federal account and our non-Federal account. Allocation is required for administrative expenses (e.g., rent, utilities, salaries), generic voter identification, partisan voter registration and GOTV activities that are not candidate-specific, fundraising expenses, and communications on behalf of both Federal and non-Federal candidates (such as a mailer that mentions both). This allocation is done in accordance with the FEC's regulations; the precise allocation formula depends on the nature of the activity. For example, administrative expenses and generic party activities have been allocated based on the "ballot composition" formula, which calculates the ratio of Federal offices and non-Federal offices expected to be on the general election ballot in that cycle. For example, in the 1999-2000 cycle, which included a Presidential race, administrative expenses were required to be allocated 43% Federal - 57% Non-Federal. In this cycle, where the only [3 PCS CDP 9] Federal office on the ballot is the Congressional race, administrative expenses are required to be allocated 12.5% Federal/87.5% Non-Federal. Public communications are allocated using a "time and space" formula. For example, the

costs of a mailer that endorses one Federal candidate and nine non-Federal candidates equally would have be paid one-tenth from the Federal account and nine-tenths from the non-Federal account. Fundraising expenses are allocated on a "funds raised" basis. For example, if a fundraising dinner raises $100,000, and $40,000 is deposited into the Federal account and $60,000 into the Non-federal account, then the dinner expenses are paid 40% with Federal dollars and 60% Non-federal. While I do not always agree with the FEC's characterization of a particular activity as having an effect on a Federal election, the allocation system has been a fair and understandable method of dealing with activities that may have some effect on a Federal election, even if somewhat remote and indirect. It also recognizes the reality that most states combine Federal and non-Federal elections, and that certain expenditures may effect both.

16. Over the years, CDP has received transfers of both Federal and non-Federal money from the Democratic National Committee (DNC), the Democratic Congressional Campaign Committee (DCCC), and the Democratic Senatorial Campaign Committee (DSCC). The majority of these transfers were for issue advocacy, although money has also been transferred for voter registration, get-out-the-vote activities, and even administrative expenses. We are able to raise a substantial amount of money for our non-Federal activities and do not rely on national party transfers for those purposes. Some transfers were not for particular expenses, but were "trades" between CDP and the DNC that reflected our different needs in a particular election cycle. For example, in 2000, we had some additional Federal money at the end of the [3 PCS CDP 10] year, and the 2001-2002 cycle was going to require a lower percentage of Federal money for allocated expenditures. The DNC needed Federal money, but had additional non-Federal money. So, we traded. This is legal and was fully reported on our State and Federal campaign reports.

17. The FEC has determined that issue advocacy is a form of generic party activity and must be allocated between Federal and non-Federal money. The allocation ratio for the state parties has been somewhat more favorable than the ratio for national parties. For example, in 2000, CDP's Federal portion was 43% while the national parties' was at least 65%. Since Federal money is harder to raise and is less available, transferring money to CDP for issue ads allowed CDP to run ads which it otherwise might not have been able to afford, and allowed the ad to be run with a lower percentage of Federal money. CDP also benefitted by having its name on the ad (which gave the Party increased visibility for all of its races), and the ads typically featured themes that were popular "Democratic" themes and were designed to motivate voters around those issues (e.g., health care, Social Security). It is important to note that this was all done legally and only after FEC had indicated that this was permissible. It is also my view that the "transfer" issue is something of a "red herring" in that it could have been addressed by the FEC or Congress on a very direct basis and cannot be used as a justification for imposing a number of other restrictions on the political parties that have nothing to do with the problems supposedly created by these transfers. [3 PCS CDP11]

THE BCRA'S UNREASONABLY BROAD DEFINITION OF "FEDERAL ELECTION ACTIVITY"

18. I have reviewed the provisions of the Bipartisan Campaign Reform Act (BCRA). The BCRA creates a new term -- "federal election activity" -- and requires that any activities falling within the scope of that term must be paid for either completely with Federal contributions, or with a combination of Federal contributions and a new form of Federally regulated money -- "Levin amendment" contributions. Levin contributions are not limited by Federal law as to source (i.e., they may include corporate or union

contributions if permitted under State law), but they are subject to the Federal limits as to amount. Under the BCRA, both Federal contributions and Levin contributions will be limited to $10,000. This means that State parties such as California will now be required to have at least three accounts: a Federal account, a Federally limited Levin account and the State's non-Federal accounts. (For example, in California, the Party must maintain separate accounts for candidate-related contributions and expenditures, and for non-candidate-related contributions and expenditures.) The first two of these accounts are Federally limited, and only those two accounts may be used to fund "federal election activities" after the BCRA goes into effect.

19. Based upon the past patterns of non-Federal contributions to CDP, it is clear that between 76% and 86% of CDP's non-Federal contribution income has been from contributions in excess of the $10,000 Levin limit. Imposing the Levin limit during the last four cycles would have resulted in the following reductions of CDP's non-Federal income: 1995-96 income would have been reduced from $12,991,251 to $3,166,918 (a 76% reduction); 1997-98 income would have been reduced from $15,957,831 to $3,839,818 (a 76% reduction); 1999-00 income would [3 PCS CDP 12] have been reduced from $15,617,002 to $2,141,138 (an 86% reduction); and 2001-02 income would have been reduced from $13,928,496 to $2,489,162 (through June 30, 2002) (an 82% reduction -- although it will be somewhat smaller at the close of the cycle). Although CDP may continue to accept the higher contributions under California law, the usefulness of those contributions is limited because any income from such contributions may not be used under the BCRA for any activity considered "federal election activity." Exhibit A illustrates the impact of the Levin limits on CDP's non-Federal income during these cycles.

20. Under the new definition of "federal election

activity," virtually all of CDP's activities in support of its State and local candidates, as well as most of its "generic" party-building activity, will be considered "federal election activity" even though those activities have only a remote or indirect effect on any Federal election or, in some cases, no effect at all. As a result, non-Federal money cannot be used at all for these activities. This has the following consequences for our activities:

a. **Voter registration activities.** The BCRA makes all voter registration activities within 120 days of any election including a Federal office "federal election activity." This includes primary elections. This means that in an election year, virtually all voter registration activity must be paid with Federal money, or a combination of Federal and Levin money. The view that this activity is for the purpose of "influencing" a Federal election misunderstands that nature of party registration activity. Although we have in the past allocated the costs of voter registration between Federal and non-Federal money as required by the FEC regulations, it is often the case that voter registration activities are primarily driven by the desire to affect State and local races. For example, this is a non-Presidential year with no U.S. Senate [3 PCS CDP 13] races on the ballot in California. Because of recent redistricting, there is only one closely contested Congressional race – the 18th CD located in the Modesto area. Nonetheless, CDP has been actively involved in voter registration activities throughout the State. Similarly, the two largest urban areas of the State – Los Angeles and San Francisco – rarely experience competitive Federal races, but CDP regularly funds substantial voter registration activities in both of those areas.

In addition, the BCRA ignores the fact that political parties are, in large part, membership organizations and voter registration is the way in which the parties add to their membership. For this reason, CDP engages in a range of

activities throughout the election cycle, although it is inevitable that interest is most focused as an election approaches. During the past year, CDP participated in registering over 300,000 Democratic registrants. CDP makes direct expenditures for voter registration by producing voter registration materials and literature that is distributed to local groups and by sponsoring a program which encourages local Democratic Clubs and Assembly District Committees to conduct voter registration drives and pays them according to the number of new registrations. CDP also conducts voter registration activities in connection with new citizen ceremonies throughout the State. Finally, CDP contributes substantially to voter registration programs either run by or allied with the State legislative leadership. CDP's expenditures on voter registration were approximately $145,000 in the 1995-96 cycle; $300,000 in the 1997-98 cycle; $100,000 in the 1999-00 cycle; and $185,000 for the cycle January 1, 2001, through June 30, 2002. All of these expenditures were allocated between Federal money and non-Federal money according to the ratio for that cycle. It is worth noting that the cycle with the highest expenditures (1997-98) was the cycle with the lowest Federal/non- [3 PCS CDP 14] Federal ratio, i.e., it had the fewest number of Federal races on the ballot, but all the statewide elected offices were on the ballot. Since registration is essential to voting, CDP's registration efforts serve a double purpose – they add to its membership, but they also add voters to the voter rolls, an important function and one which will otherwise have to be funded by the State of California or other civic organizations not restricted by BCRA. If voter registration activities have to compete with candidate-support activities for Federally limited contributions under the BCRA, it is very likely that CDP's voter registration activities will be significantly reduced or eliminated.

b. **GOTV activities.** The BCRA defines "federal election activity" to include "voter identification, get-

out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot." Since California holds its State elections at the same time as Federal elections, this means that virtually all activity in support of State candidates will be "federal election activity" regardless of the relative importance of the Federal offices on the ballot. For example:

- State candidate mail. Even if the mail only identifies a State candidate, if it also encourages persons to vote, it is GOTV activity and must be paid with Federally limited funds. This mail often gives both the election date and the person's polling place -- both GOTV criteria under the FEC's regulations. Some mail also contrasts the Democratic position on an issue with that of the Republicans. Under the BCRA, this could be considered "generic party activity." Examples of our State mail are attached as Exhibits D and E. CDP typically spends approximately $7 - $8 million in non-Federal funds on its mail program in support of State [3 PCS CDP 15] candidates – mail that does not include Federal candidates. As stated above, there are 120 members of the Legislature, eight statewide elected officials and numerous judicial elections, ballot measures and local races. In 2000, CDP produced and sent out over 350 different mail pieces for its State and local candidates and ballot measures. Although this mail does not reference Federal candidates or any Federal races, non-Federal money can no longer be used for this State mail after the BCRA goes into effect.
- Mail in support of or opposition to ballot measures. The same restrictions apply; if the mail urges voters to vote, it is considered

"federal election activity" under the BCRA. It does not matter that no Federal candidate is mentioned. The San Francisco general ballot for the November, 2002 contains 7 statewide measures and 20 local measures. The local party committee cannot send out any "GOTV" mail concerning any of these measures unless paid for completely with Federally limited funds.

- Apart from the mail, much of the Party's direct voter GOTV activity is done by "telephone banks" and door-to-door canvassing in which voters are urged to vote. In the past, this activity has been paid with non-Federal money if only State candidates were endorsed. If the message carried was a "generic" message supporting all Democratic candidates, the cost was allocated between Federal and non-Federal money. However, a significant percentage of paid phone banking (perhaps 40-50%) is done in connection with a specific State or local race and refers only to the State or local candidate. After the BCRA goes into effect, all [3 PCS CDP 16] phone bank and canvassing GOTV activity will have to be paid with federally limited money, even if it only mentions a State candidate and does not mention a Federal candidate. Not a single non-federal dollar could be used. An example of a purely State phone script is attached as Exhibit F. An example of a generic phone script is attached as Exhibit G.

- Slate cards/doorhangers. These are cards or mail pieces listing all the party's endorsed candidates urging voters to vote on election day, and providing information such as the date of

the election and the polling place. They are usually tailored for distribution in a particular local area, and State and local races dominate numerically over the Federal races. Examples of local slate mail and a local doorhanger are attached as Exhibits H and I. Like grass-roots activities, they have been allocated between Federal and non-Federal money according to the over-all space occupied by the Federal candidates. Under BCRA, these are considered GOTV activity, and non-Federal money can no longer be used.

c. **Generic party activity**. The BCRA defines generic activity as any activity that promotes a party and does not promote a Federal or non-Federal candidate. It is difficult to imagine many party activities that could not be characterized as "promoting" the party. All generic activity must be paid with Federally limited funds. In the past, the costs of these activities would have been allocated between Federal money and non-Federal money. For example, CDP routinely sends a postcard to new registered Democratic voters explaining the principles of the Party and urging them to actively support the Party. An example is attached as [3 PCS CDP 17] Exhibit J. After the BCRA, non-Federal funds cannot be used to print or mail the postcard. Other examples of generic material are attached as Exhibits K and L.

d. **Public communications.** Under the BCRA, public communications are communications that refer to a clearly identified Federal candidate and that "promote or support" a Federal candidate. In the past, CDP has done mail and radio advertisements on behalf of State candidates showing that they are endorsed by a Federal candidate. In the past, these could be paid with non-Federal money as long as the Federal candidate's election was not referenced or advocated. To the

extent that these types of public communications can be construed to "promote or support" the endorsing Federal candidate they will now have to be paid completely with Federal money.

e. **Broadcast Communications**. If any of the above activities (i.e., voter registration, GOTV or generic party-building messages) use a "broadcast" medium, they must be paid only with Federal money. Even Levin money cannot be used. Examples of messages that cannot be broadcast with any non-Federal funds are attached as Exhibits M, N, and O.

THE ADVERSE IMPACT OF BCRA

21. I have reviewed CDP's expenditures since 1995. Although it is difficult to say precisely which activities conducted in the past would be "federal election activities" under the BCRA, I believe that certain categories of activities would be included in the new BCRA definition. In determining which activities would be "federal election activities," I have excluded virtually all of the Party's administrative costs, although some of those costs would certainly fall within the definition – particularly certain staff salaries which might reach the 25% "influencing federal elections" threshold of the BCRA. Administrative costs, although not [3 PCS CDP 18] "federal election activities," are required to be allocated, that is, paid in part with Federal money. In calculating the Federal portion of administrative costs, I have used the new allocation formula issued by the FEC rather than the formula that was in effect for that particular cycle. I have also excluded past activities that would be prohibited under the BCRA – for example, I have excluded transfers to other party committees, and contributions to 501(c) organizations and 527 organizations.

22. Even after excluding transfers from other parties and contributions to other organizations, it is clear that the vast

majority of CDP's historical activities in support of its candidates and measures and/or to build the Party's membership base and promote its ideology may be classified as "federal election activity." This means that those activities can no longer be funded from the non-Federal money we raise in accordance with California law -- they will have to be funded either completely with Federal funds or a combination of Federal funds and Levin limit funds. Exhibit B illustrates both administrative or overhead expenses that will have to be funded in part with Federal money plus the new category of "federal election activity" that will have to be funded with Federally limited money. Exhibit C compares the new income levels under BCRA with historical expenses that the BCRA will require to be paid with Federally limited funds.

23. It is clear that if available income is reduced by almost two-thirds, CDP will clearly not be able to continue funding its historical level of expenditures and its activities will have to be curtailed dramatically. If you include national party transfers for activities other than issue ads, the impact is even more pronounced. Not only will administrative costs have to be reduced, but certain administrative costs are actually likely to increase: accounting (because of [3 PCS CDP 19] BCRA's additional reporting requirements) and fundraising. In addition, since only Federal money can be used to raise either Federal or Levin dollars, any increase in fundraising efforts will come at a direct cost to CDP's programmatic and candidate-support activities. All of CDP's programmatic activities will essentially be competing against each other (and against administrative costs) for limited Federal/Levin dollars. As a practical matter, candidate support and GOTV activities will remain the Party's priority. Voter registration, generic party-building activity and grass-roots organizing activities will be reduced or largely eliminated while the remaining GOTV activity will be dramatically reduced, both in terms of the number of candidates supported and the level of support

available for a given candidate. It is clear that it is the non-Federal expenditures that will suffer most dramatically rather than the Federal expenditures.

24. The cost of communicating with voters in California is substantial. It is a geographically large state, with a very large population, and several expensive media markets. The cost of television is higher for the Party than it is for candidates. If the national parties are prohibited from transferring money to assist with ads, it is unlikely that CDP will be able to afford to do them, although we would like to be able to do them to the same extent as other organizations and without additional limitations on the type of money used. Even if the Party limits its communications to mail, in order to compete for attention effectively the mail must have a visual impact and there must be repeated contact. In my experience, an organization cannot reach voters effectively by mail unless it sends at least 12-15 pieces in relatively close proximity in terms of time. The average cost of a CDP mail piece has been approximately $.25 - .35 (postage alone is at least $.10 per piece); the average number of mail pieces for a State Senate [3 PCS CDP 20] district is 150,000; the average number for a State Assembly district is 90,000. A statewide mail piece, such as a vote-by-mail piece, costs approximately $260,000. A sample Vote By Mail piece is attached as Exhibit P. None of these pieces mention Federal candidates, yet all of these costs will have to be paid with Federally limited funds. If CDP's income is limited by the BCRA by the percentages indicated above, CDP will clearly not only not be able to do any television or radio advertisements, its mail program will be reduced below the level of effective communication of its message.

25. In addition, GOTV efforts other than the mail program will suffer. A ground campaign is very expensive to run. Although CDP recruits volunteers, a significant number of persons must also be paid. I estimate that in the coming

election, approximately 50% of the GOTV work will have to be done by paid staff. Candidates cannot, for the most part, afford to conduct this kind of campaign; they use the media or mails because these methods are more effective for the money spent. Nor do candidates have the infrastructure set up to conduct this kind of campaign. The parties, through their local organizations, conduct the only real ground campaign. We anticipate supporting at least 30 local offices for the upcoming election. The vast majority of these offices will have paid staff doing at least some training, recruiting, coordinating, etc. If the parties cannot conduct or support these activities, either from lack of available funds or restrictions imposed on coordinating party activities at more than one level, these activities are likely to simply disappear over time. [3 PCS CDP 21]

EFFECTS OF BCRA ON FUNDRAISING AND ASSOCIATIONAL ACTIVITIES

26. The broad definition of "federal election activity" and the limits on raising money that can be used to fund those activities will be exacerbated by several other provisions of the BCRA. First, the BCRA prohibits national party officers or agents from raising Levin money, as well as non-Federal funds. It also prevents the use of such funds if they have been raised by other Party officials, such as County Central Committee officers. CDP and DNC's by-laws provide that the Chair and Vice-Chair of CDP are members of the Democratic National Committee by virtue of their office. Similarly, County Central Committee Chairs are members of CDP's Executive Committee. Members of the DNC in California, as well as County Central Committee officers, are also often active in Party activities at the State level, and the DNC includes a number of State, Federal, local officials and even a CDP staff person. The political parties are designed to have a great deal of "overlap" in their membership and leadership. The provisions of the BCRA, particularly the

criminal provisions, will make it difficult, if not impossible, for persons to engage in activities on more than one level (local, state, national) if those activities or communications can subject them to investigation or prosecution for assisting another party committee in raising what are essentially Federally regulated funds.

27. A second way in which the BCRA will exacerbate the problems caused by its "federalization" of State activities is that it prohibits Federal candidates and officeholders from assisting the State or local party committees in raising Levin funds or non-Federal funds. CDP's candidates at all levels are its standard-bearers. They are the face of the Party to the party membership as well as the public at large. The Federal candidates and officeholders are often [3 PCS CDP 22] better known than State or local candidates, particularly in a state like California with term limits for State Legislators. Members of the Party and, especially, persons actively engaged in supporting the Party, enjoy meeting the candidates – including Federal candidates – and hearing them discuss issues in a particular campaign or in the news. The BCRA, by allowing Federal candidates and officeholders to "appear" at fundraising events but prohibiting them from any involvement in fundraising, will put them at risk with respect to participating in such events and is likely to cause them to minimize these events or avoid them altogether. Many organizations engaged in fundraising use "celebrities" or similarly well-known spokespersons to stimulate enthusiasm and excitement over the organization's program. Parties are not significantly different in this regard, and the prohibition on Levin fundraising and non-Federal fundraising by Federal candidates or officeholders unreasonably deprives the parties of the assistance of some of their most successful and popular representatives.

28. The BCRA restricts transfers of Federal money between party committees if that money is to be used in

conjunction with Levin money for "federal election activities." This makes no sense. Federal money is, by definition, raised in compliance with all of the Federal limitations as to both source and amount. CDP can use its own Federal money for "federal election activities," but cannot use any Federal money transferred from another party committee. The only apparent explanation for these restrictions is a desire to inhibit intra-party coordination and further inhibit the development of strong parties. Since Federal money is difficult to raise and, under the BCRA, will have to be used in large measure for even non-Federal electoral activity, it is unlikely that such funds would be transferred unless one party committee had "surplus" funds and another party committee needed such funds, as in the case of a closely [3 PCS CDP 23] contested seat. In these cases, the parties should have the freedom that other organizations have to make basic organizational decisions about where money is best spent. Even though Levin funds are not subject to all the Federal restrictions (although subject to significant restriction), the same is true as to the transfer of Levin funds among the State and local parties. Transferring money already raised within certain limits cannot be said to be circumventing such limits. The limits on transfers and the ban on joint fundraising activities between party committees make it clear that the real intent of the Levin limit is to limit over-all spending and weaken the parties by reducing their participation in the election process.

29. Fundamentally, the BCRA attempts to separate and isolate each level of the party. Currently, the parties at all levels are bound together not only by ideology, but also in the common enterprise of electing candidates up and down the ticket. In various ways, the parties attempt to coordinate their efforts, reach out to their core constituencies and allocate their collective resources to achieve both electoral goals and ideological goals. In the electoral context, the Democrats have had the "coordinated campaign," which has been an effort to

bring all the elements of the party together to maximize their resources and the likelihood of electoral success. The coordinated campaign involves representatives of the national, State and local parties, as well as constituent groups that have historically provided strong grass-roots support, coming together to discuss the very real and practical problems of winning campaigns. If these persons have to worry about whether their discussions amount to "soliciting," "receiving," "directing," or "spending" non-Federal money, and whether their communications subject them to criminal prosecution, it will be virtually impossible to engage in the kind of collective planning and decision-making that is part and parcel of election campaigns. Moreover, these [3 PCS CDP 24] restrictions are not imposed on other groups participating in the political process – only on the political parties.

30. CDP has also made certain expenditures that are directly related to its State and local electoral activities that will be prohibited by the BCRA. For example, contributions to organizations described in IRS Code Section 501(c) are prohibited if they engage in federal election activity, including voter registration and GOTV. Most committees that are organized to support or oppose ballot measures in California are organized as 501(c)(4) committees; it is my understanding that this has been required by the IRS. Virtually all of these committees engage in some activity that would be characterized as GOTV. The ban on contributions means not only that CDP cannot contribute directly to a particular ballot measure committee; it also cannot make "in-kind" contributions to such a committee. The CDP by-laws give the Party the authority to endorse on ballot measures; CDP commonly communicates its endorsement by including it in mail pieces that contain a combination of candidate and ballot measure endorsements. Each of these constitutes an "in-kind" contribution to the benefitted committee unless done completely independently of the committee. This ban on contributions to ballot measure

committees, whether direct or in-kind, means that CDP will be prohibited from involvement in many of the most significant State controversies – issues such as affirmative action, education of immigrant children, welfare reform, restrictions on union membership, and term limits, all of which have been the subject of ballot measures in recent years.

31. The BCRA also prohibits any contributions to organizations described in IRS Code section 527, without regard to their activity. I understand Section 527 organizations are commonly thought of as PACs, but the term also includes political parties, clubs, other groups [3 PCS CDP 25] engaged in partisan activities and candidate controlled committees. CDP has also contributed to 527 organizations, particularly its Assembly District Committees, and Democratic clubs. These contributions are made to assist these local committees with very basic administrative and organizational costs, as well as for voter registration activities. Although these committees have traditionally engaged in grass-roots GOTV activity, they are not engaged in direct activities in connection with Federal elections; in fact, they are strongly discouraged by CDP from engaging in Federal electoral activities. Ironically, the BCRA apparently excepts Federal political action committees from this prohibition, but does not except purely "local" political action committees, which engage only in the kind of "grass-roots" activity that the BCRA purports to advance. Other 527 organizations funded by CDP in the past are the voter registration programs conducted by the Party's leadership in the State Senate and Assembly. The BCRA not only prohibits the Party from contributing to the voter registration programs of its own state leaders, it apparently requires any association of State Legislators who wish to do voter registration to register as a Federal committee and pay for these activities with only Federally limited money.

OTHER STRUCTURAL PROBLEMS CREATED BY

BCRA

32. The BCRA severely limits the abilities of State and local parties in one other way – it prohibits a party committee from making an independent expenditure in support of or opposition to a Federal candidate if any other national, State or local party committee anywhere in the country has made a coordinated expenditure and, conversely, it prohibits a party committee from making a coordinated expenditure in support of or opposition to a Federal candidate if any other national, State or local party committee anywhere in the country has made an independent expenditure. As a practical matter, I do not have any way of knowing what party committees [3 PCS CDP 26] have made such expenditures without examining the reports of each and every party committee in the country and, even then, because of the lag time between the close of a reporting period and the actual filing date for that period, I might not be aware of a particular coordinated or independent activity that has taken place. As a matter of law, I understand that CDP is entitled to make independent expenditures so long as those expenditures are truly independent and are not coordinated with the candidate. Although CDP can ensure that its independent activities have not been coordinated with a candidate, it has no control over (and usually no knowledge of) the activities of other party committees. Even within California, CDP has no control over (and usually no knowledge of) the activities of the County Central Committees. These Committees function independently of CDP.

33. The BCRA will also significantly increase CDP's costs of complying with Federal law. CDP has six full-time employees responsible for record-keeping and preparation of the reports required by State and Federal law. In an election year we file quarterly and pre-election and post-election reports with the FEC. The BCRA will require monthly reporting if we

maintain a Levin account. In non-election years, the number of reports would increase from two to fourteen. In addition, the limitations on Levin money (apart from the amount) will require additional verification efforts. I anticipate that CDP will have to hire at least one additional staff person just to meet the additional BCRA verification and reporting requirements. Ironically, this means that CDP's significantly reduced income will have to be spent at least in part on compliance costs and increased fundraising costs that will be required by the new law. [3 PCS CDP 27]

CONFLICT WITH STATE LAW

34. The basic principles of the BCRA are at odds with Proposition 34, the California campaign finance law enacted by a vote of the people in November, 2000. As stated above, that law combines limits on contributions to candidates with voluntary spending limits. However, the law was specifically designed to allow the political parties to play a greater role in State and local elections and to provide an "insulating" effect between large contributors and candidates. Because the role of the parties in California was viewed as basically a positive one, the limits for contributions to the parties for candidate expenditures were set relatively high ($25,000) and are unlimited for expenditures such as administrative expenses, generic party-building, voter registration and GOTV expenses and ballot measure expenditures. Contributions and expenditures by the Party on behalf of its State candidates are not limited, reflecting the view that these expenditures are not harmful. Finally, the spending limits for candidates were specifically set with the intent that political party expenditures would augment the candidate's expenditures and would not count against the candidates' voluntary expenditure limits. In other words, the parties can support its candidates by mail, etc. without such expenditures counting against the spending limits. The point was to

encourage the parties to actively support their candidates and thereby reduce the candidates' need to raise large campaign treasuries while at the same time allowing the parties and the candidates to cooperate in effectively communicating the candidates' (and the parties') message. The BCRA will adversely affect the Party's support for all of its candidates, but particularly its State and local candidates. If all Party communications and GOTV activity for State and local candidates becomes "federalized" and can only be financed [3 PCS CDP 28] with Federally limited money, the Party will simply be unable to afford these activities and it will not be able to provide the kind of organizational support for its State and local candidates envisioned by Prop. 34. Although non-Federal money can be contributed directly to State and candidates, such contributions will count against the spending limits and therefore the over-all resources available to the State candidates will be significantly reduced.

ADDITIONAL ISSUES

35. I understand that various "experts" have asserted either that the parties will simply be forced to raise more Federal money (assisted by the new, higher limits) or, to the extent they experience a drop in actual income, will be forced to go back to volunteers and increased grass-roots efforts. Both of these assertions are wrong. Over the last 20 years, the Party has tried a number of different approaches to raise money within the Federal limits. The most successful program has been our telemarketing program. In recent years, our telemarketing program has raised between $800,000 and $2 million. The average contribution is $27.00. The main drawback with this program is that it is very expensive to run. On the average, it costs approximately $.40 - $.50 for every dollar raised. We have also conducted direct a joint fundraising direct mail campaign with the DNC. This will be prohibited under the BCRA; if CDP wished to continue it, they

would have to incur the increased costs of doing it "in-house." In reviewing our Federal contributions since 1995, I consider it significant that the number of contributions made at the $5,000 level (i.e., the number of persons giving the current maximum) was very small, usually accounting for less than 5% of the total. The total amount from those contributions has ranged between $170,000 (1999-00) to $355,000 (1995-96). Since the number of contributions at the $5,000 level is so small, I do not believe that doubling the limit from [3 PCS CDP 29] $5,000 to $10,000 will result in a substantial increase in the amount of Federal money contributed.

36. The notion that the parties can simply return to the "good old days" of volunteers and grass-roots organizing is also wrong. On a very basic level, the political parties are competing for the attention of potential voters with a deluge of competing messages from all media sources – television, radio, mail, news, and the Internet. We are also competing for volunteer time at a time when discretionary time is at a minimum and more women are employed outside the home. The size of the Senate and Assembly districts are such that they are simply too large to rely primarily on volunteers. Although our local offices still use, and try to recruit, volunteers, an increasing amount of GOTV work is done by paid staff. I expect that in this election at least 50% of the GOTV work will have to be done by paid employees. That is why candidates cannot afford it. Many activities such as the distribution of lawn signs and buttons are valuable to maintain a presence in the community, generate enthusiasm, and create a sense of identification and participation. However, these things alone do not have the necessary impact to reach, educate and persuade a large number of voters. Given the sophisticated and professionally packaged messages that voters are subjected to everyday, the only way to "break through" for their attention is to provide similarly sophisticated and professionally packaged communications on behalf of the parties. Similarly, even

though volunteer and grass-roots activities remain an important part of the parties' strategies, even those activities must be supervised and coordinated by paid staff if they are to be effective.

37. In addition, in my view, the BCRA poses one additional very real risk for the parties – that they will become marginalized in the political process. People become active in the [3 PCS CDP 30] political parties, and make contributions to the parties, because the parties play a central role in defining the issues and articulating those issues through their candidates. Although many interest groups are also involved with the parties, the force and role of these groups is moderated in the "give and take" of party politics so that nō particular group monopolizes the parties or the selection of candidates. If the issues are instead defined by those interest groups (including the narrower ideological factions within the parties which are free to set themselves up as independent organizations not subject to the restrictions of the BCRA), and those groups set the agenda for elections, both the candidates and the public will be likely to focus on those groups as they seek to influence the outcome of a particular election. The parties will become under-financed, ineffective bystanders as other groups drive both issues and candidates.

38. I am the custodian of the records for the documents that have been designated as potential trial exhibits, and/or attached to various discovery requests, including our Requests For Admission, and thereby provided to the defendants and/or intervenors in this case and disclosed pursuant to the Court's discovery orders. I have been informed that these documents may be used at trial. They are true and correct copies of documents that have been created and maintained in the ordinary course of the California Democratic Party's business operations.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct. Executed this 14 day of October 2002, at Sacramento, California.

/s/
KATHLEEN BOWLER

GROSS INCOME
CA DEMOCRATIC PARTY
Data Compiled from FPPC and FEC Campaign Reports

1995 NON-FEDERAL			
Percentage		**Amount**	**GROSS INCOME**
40%		$1,095,462.94	Receipts - $10,000 or less (within Levin limits)
30%		$1,054,130.45	Non-Levin Receipts
30%		$865,051.74	DNC/DCCC/DSCC Transfers (prohibited under BCRA)
	60%	$1,919,182.19	*Non-Levin Receipts and prohibited Receipts under BCRA*
100%		$3,814,645.13	TOTAL 1995 NON-FEDERAL

1995 FEDERAL			
Percentage		**Amount**	**GROSS INCOME**
76%		$ 1,449,356.17	Receipts Less than $5,000
7.7%		$ 140,000.00	$5000 Receipts
0.3%		$ 5,286.00	Candidates/State Party Transfers
16%		$ 314,892.00	DNC/DCCC/DSCC Transfers
	16.30%	$320,178.00	*Prohibited receipts under BCRA for federal election activities*
100%		$ 1,909,534.17	TOTAL 1995 FEDERAL

[Bowler Dec. Ex. A; 3 PCS CDP 34]

GROSS INCOME
CA DEMOCRATIC PARTY
Data Compiled from FPPC and FEC Campaign Reports

1996 NON-FEDERAL			
Percentage		**Amount**	**GROSS INCOME**
12%		$2,073,955.41	Receipts - $10,000 or less (within Levin limits)
51%		$8,770,202.32	Non-Levin Receipts
37%		$6,387,639.85	DNC/DCCC/DSCC Transfers (prohibited under BCRA)
	88%	$15,157,842.17	*Non-Levin Receipts and prohibited Receipts under BCRA*
100%		$17,231,797.58	TOTAL 1996 NON-FEDERAL

1996 FEDERAL			
Percentage		**Amount**	**GROSS INCOME**
44%		$ 2,512,171.80	Receipts Less than $5,000
4%		$ 215,000.00	$5000 Receipts
3%		$ 141,120.00	Candidates/State Party Transfers
49%		$ 2,748,899.07	DNC/DCCC/DSCC Transfers
	52%	$2,890,019.07	*Prohibited receipts under BCRA for federal election activities*
100%		$ 5,617,190.87	TOTAL 1996 FEDERAL

[Bowler Dec. Ex. A; 3 PCS CDP 35]

GROSS INCOME
CA DEMOCRATIC PARTY
Data Compiled from FPPC and FEC Campaign Reports

1997 NON-FEDERAL			
Percentage		Amount	GROSS INCOME
100%		$440,277 09	Receipts - $10,000 or less (within Levin limits)
		$0 00	Non-Levin Receipts
		$0 00	DNC/DCCC/DSCC Transfers (prohibited under BCRA)
		$0 00	*Non-Levin Receipts and prohibited Receipts under BCRA*
100%		$440,277.09	TOTAL 1997 NON-FEDERAL

1997 FEDERAL			
Percentage		Amount	GROSS INCOME
95 0%		$ 1,471,209 33	Receipts Less than $5,000
4 7%		$ 70,000 00	$5000 Receipts
0 1%		$ 1,126 00	Candidates/State Party Transfers
0 2%		$ 2,500 00	DNC/DCCC/DSCC Transfers
	0 30%	$3,626 00	*Prohibited receipts under BCRA for federal election activities*
100%		$ 1,544,835.33	TOTAL 1997 FEDERAL

[Bowler Dec. Ex. A; 3 PCS CDP 36]

GROSS INCOME
CA DEMOCRATIC PARTY
Data Compiled from FPPC and FEC Campaign Reports

1998 NON-FEDERAL			
Percentage		Amount	GROSS INCOME
19%		$3,399,541 20	Receipts - $10,000 or less (within Levin limits)
65%		$12,118,012 50	Non-Levin Receipts
16%		$2,896,435 00	DNC/DCCC/DSCC Transfers (prohibited under BCRA)
	81%	$15,014,447 50	*Non-Levin Receipts and prohibited Receipts under BCRA*
100%		$18,413,988.70	TOTAL 1998 NON-FEDERAL

1998 FEDERAL			
Percentage		Amount	GROSS INCOME
36%		$ 2,390,660 33	Receipts Less than $5,000
2%		$ 145,000 00	$5000 Receipts
9%		$ 566,899 00	Candidates/State Party Transfers
53%		$ 3,484,170 00	DNC/DCCC/DSCC Transfers
	62%	$ 4,051,069 00	*Prohibited receipts under BCRA for federal election activities*
100%		$ 6,586,729.33	TOTAL 1998 FEDERAL

[Bowler Dec. Ex. A; 3 PCS CDP 37]

GROSS INCOME
CA DEMOCRATIC PARTY
Data Compiled from FPPC and FEC Campaign Reports

1999 NON-FEDERAL			
Percentage		Amount	GROSS INCOME
41%		$755,465 94	Receipts - $10,000 or less (within Levin limits)
47%		$849,940 68	Non-Levin Receipts
12%		$217,000 00	DNC/DCCC/DSCC Transfers (prohibited under BCRA)
	59%	$1,066,940 68	*Non-Levin Receipts and prohibited Receipts under BCRA*
100%		$1,822,406.62	TOTAL 1999 NON-FEDERAL

1999 FEDERAL			
Percentage		Amount	GROSS INCOME
92 7%		$ 1,756,878 56	Receipts Less than $5,000
3%		$ 55,000 00	$5000 Receipts
0 3%		$ 13,350 00	Candidates/State Party Transfers
4%		$ 71,000 00	DNC/DCCC/DSCC Transfers
	4 3%	$84,350 00	*Prohibited receipts under BCRA for federal election activities*
100.0%		$ 1,896,228.56	TOTAL 1999 FEDERAL

[Bowler Dec. Ex. A; 3 PCS CDP 38]

GROSS INCOME
CA DEMOCRATIC PARTY
Data Compiled from FPPC and FEC Campaign Reports

2000 NON-FEDERAL			
Percentage		Amount	GROSS INCOME
6%		$1,385,671 86	Receipts - $10,000 or less (within Levin limits)
58%		$12,625,923 16	Non-Levin Receipts
36%		$7,859,216 00	DNC/DCCC/DSCC Transfers (prohibited under BCRA)
	94%	$20,485,139 16	*Non-Levin Receipts and prohibited Receipts under BCRA*
100%		$21,870,811.02	TOTAL 2000 NON-FEDERAL

2000 FEDERAL			
Percentage		Amount	GROSS INCOME
33%		$ 2,911,088 18	Receipts Less than $5,000
1%		$ 115,000 00	$5000 Receipts
3%		$ 214,673 08	Candidates/State Party Transfers
63%		$ 5,523,903 00	DNC/DCCC/DSCC Transfers
	66%	$5,738,576 08	*Prohibited receipts under BCRA for federal election activities*
100%		$8,764,664.26	TOTAL 2000 FEDERAL

[Bowler Dec. Ex. A; 3 PCS CDP 39]

GROSS INCOME
CA DEMOCRATIC PARTY
Data Compiled from FPPC and FEC Campaign Reports

2001 NON-FEDERAL			
Percentage		Amount	GROSS INCOME
16%		$1,677,960 08	Receipts - $10,000 or less (within Levin limits)
81%		$8,488,548 04	Non-Levin Receipts
3%		$313,153 85	DNC/DCCC/DSCC Transfers (prohibited under BCRA)
	84%	$8,801,701 89	*Non-Levin Receipts and prohibited Receipts under BCRA*
100%		$10,479,661.97	TOTAL 2001 NON-FEDERAL

2001 FEDERAL			
Percentage		Amount	GROSS INCOME
95%		$ 2,100,313.45	Receipts Less than $5,000
2%		$ 50,000 00	$5000 Receipts
1%		$ 6,637 50	Candidates/State Party Transfers
2%		$ 46,240 28	DNC/DCCC/DSCC Transfers
	3%	$52,877 78	*Prohibited receipts under BCRA for federal election activities*
100%		$2,203,191.23	TOTAL 2001 FEDERAL

[Bowler Dec. Ex. A; 3 PCS CDP 40]

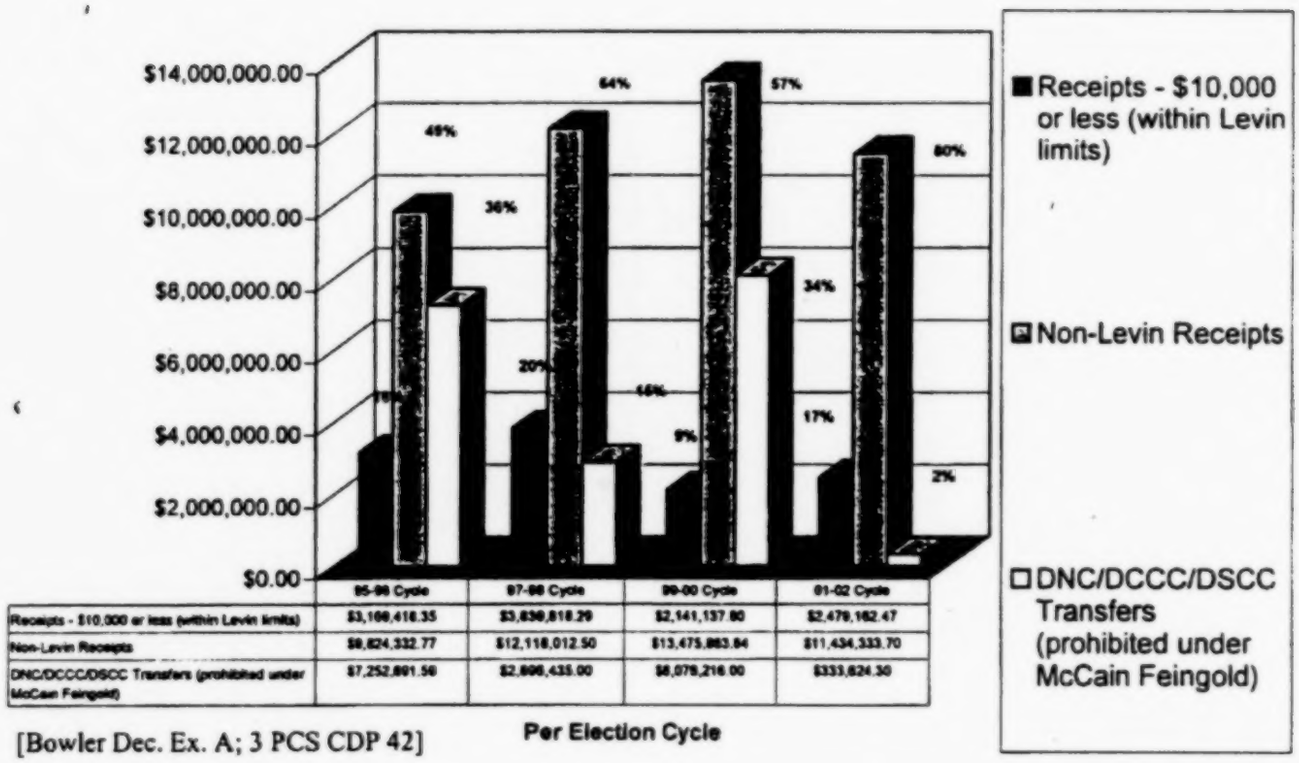
GROSS INCOME
CA DEMOCRATIC PARTY
Data Compiled from FPPC and FEC Campaign Reports

1/1/02 - 6/30/02 NON-FEDERAL			
Percentage		Amount	GROSS INCOME
21%		$801,202 39	Receipts - $10,000 or less (within Levin limits)
78%		$2,945,785 66	Non-Levin Receipts
1%		$20,470 45	DNC/DCCC/DSCC Transfers (prohibited under BCRA)
	79%	$2,966,256.11	*Non-Levin Receipts and prohibited Receipts under BCRA*
100%		$3,767,458.50	TOTAL 1/1/02 - 6/30/02 NON-FEDERAL

1/1/02 - 6/30/02 FEDERAL			
Percentage		Amount	GROSS INCOME
98 8%		$ 1,295,573 22	Receipts Less than $5,000
0 8%		$ 10,000 00	$5000 Receipts
0 4%		$ 4,900 00	Candidates/State Party Transfers
		$ -	DNC/DCCC/DSCC Transfers
100%		$1,310,473.22	TOTAL 1/1/02 - 6/30/02 FEDERAL

[Bowler Dec. Ex. A; 3 PCS CDP 41]

CDP NON-FEDERAL GROSS INCOME



	95-96 Cycle	97-98 Cycle	99-00 Cycle	01-02 Cycle
Receipts - $10,000 or less (within Levin limits)	$3,166,416.35	$3,830,818.29	$2,141,137.80	$2,479,162.47
Non-Levin Receipts	$8,824,332.77	$12,116,012.50	$13,475,883.84	$11,434,333.70
DNC/DCCC/DSCC Transfers (prohibited under McCain Feingold)	$7,252,891.56	$2,896,435.00	$8,079,216.00	$333,624.30

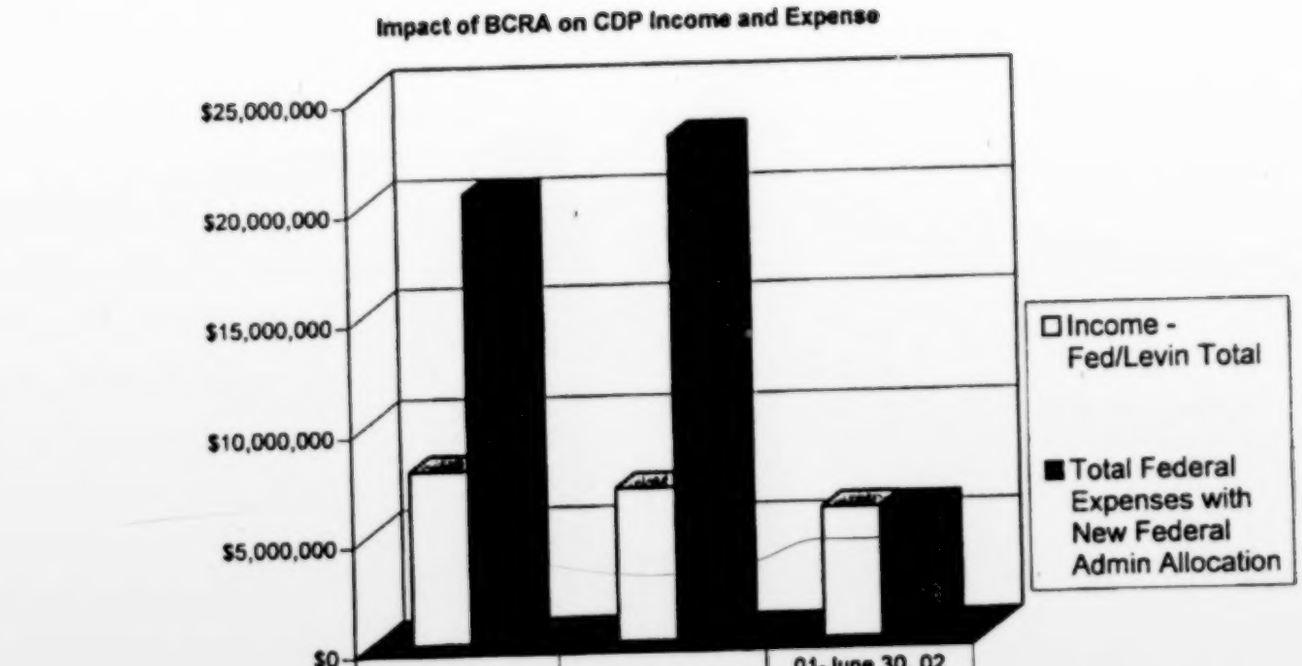
[Bowler Dec. Ex. A; 3 PCS CDP 42]

CALIFORNIA DEMOCRATIC PARTY
EXPENSE STATEMENT

For the 2-Year Election Cycles

	1997-1998	1999-2000	2001-June 2002
EXPENSES ALLOCATED BETWEEN FEDERAL AND NONFEDERAL MONEY			
Administrative Overhead	867,399	422,200	785,985
Political Reporting/Legal Services	427,875	619,612	561,251
Operations Expenses	770,140	972,981	724,007
Finance and Finance Events	617,921	742,403	388,245
Party Services Overhead	225,352	256,274	215,025
Communications/Political Operations	209,961	185,452	473,753
Research	184,616	233,036	286,558
Legal fees/Litigation	288,773	342,697	51,774
TOTAL OPERATING EXPENSES	3,382,037	3,776,635	3,467,597
BCRA Fed Allocation	21%	36%	15%
BCRA Fed Amount	712,328	1,359,588	520,140
Net Operating Expenses (Minus the Required BCRA Fed Amt)	2,679,709	2,417,046	2,947,457
EXPENSES THAT REQUIRE EITHER FEDERAL MONEY, OR FEDERAL AND LEVIN MONEY (FEA)			
Telemarketing	1,487,922	1,310,348	1,687,513
Issue Media	2,434,852	7,927,249	0
Independent Exp's/Inkinds - Candidates	7,564,862	7,160,599	2,455,860
Non-Fed Operating/Overhead Expenses	70,996	480,695	821,038
Coordinated Campaign - Generic	4,948,744	3,574,185	383,466
Contributions - Federal Candidates-IE's, 441AD's,Inkinds,Direct	3,242,411	1,096,621	33,501
TOTAL :	19,749,787	21,549,696	5,381,378
BCRA Fed Allocation Amount (from Above)	712,328	1,359,588	520,140
TOTAL WITH THE BCRA Fed Allocation	20,462,115	22,909,284	5,901,518
NONFEDERAL EXPENSES			
Direct Contributions - State Candidates	299,150	22,490	6,644
Conventions	449,443	1,191,199	820,742
TOTAL:	748,593	1,213,689	827,386
PROHIBITED EXPENSES			
Transfers to State/National Parties	1,177,110	1,270,000	591,800
Local Parties	22,883	11,050	17,491
Direct and Inkinds to Ballot Measures (if FEA)	221,156	803,277	3,348,848
527 Committees	283,650	184,082	260,065
TOTAL:	1,698,798	2,268,409	4,218,203
TOTAL EXPENDITURES:	25,589,215	28,808,428	13,894,565

[Bowler Dec. Ex. B; 3 PCS CDP 44]



	97-98 Cycle	99-00 Cycle	01-June 30, 02 Cycle
Income - Fed/Levin Total	$7,916,688	$6,979,105	$5,935,049
Total Federal Expenses with New Federal Admin Allocation	$20,462,115	$22,909,284	$5,901,518

[Bowler Dec. Ex. C; 3 PCS CDP'46]

[Bowler Dec. Ex. D; 3 PCS CDP 48]

Urgent Message

Important Polling Place Information Enclosed

Open Immediately!

Non-Profit Org.
U.S. Postage
PAID
California
Democratic
Party

Paid for by The California Democratic Party, 911 20th Street, Sacramento, CA 95814

URGENT MESSAGE

ELECTION DAY
TUESDAY NOVEMBER 7TH

YOU VOTE AT:

[redacted] W D ST
[redacted]ONTARIO MONTCLAIR ADMIN BLDG

JASPER GUIDA
1012 W F ST
ONTARIO, CA 91762-2644

GLORIA NEGRETE MCLEOD DESERVES YOUR VOTE ON TUESDAY.

GLORIA IS THE MOST QUALIFIED CANDIDATE FOR STATE ASSEMBLY. DON'T BE FOOLED BY THE LAST MINUTE ATTACK CAMPAIGN WAGED BY HER OPPONENT! AS A BUSINESS OWNER FOR FOURTEEN YEARS, SHE WILL FIGHT TO KEEP THE POLITICIANS FROM WASTING YOUR TAX DOLLARS.

UNLIKE HER OPPONENT, DENNIS YATES, WHO HAS TAKEN $70,000 FROM INSURANCE COMPANIES, GLORIA WILL FIGHT THE SPECIAL INTERESTS TO CREATE REAL HEALTHCARE REFORM.

GLORIA NEGRETE MCLEOD HAS THE SUPPORT OF THE CALIFORNIA PROFESSIONAL FIREFIGHTERS AND THE CALIFORNIA ORGANIZATION OF POLICE AND SHERIFFS.

DAN TERRY, PRESIDENT
CA PROFESSIONAL
FIREFIGHTERS

MONTY HOLDEN, EXECUTIVE DIRECTOR
CA ORGANIZATION OF POLICE
AND SHERIFFS

Your vote is crucial — less than 100 votes will determine who is elected President

[Bowler Dec. Ex. D; 3 PCS CDP 49]

CDP\CRP App.
00049

A Message from the
California Democratic Party

Democrat Tom Daly

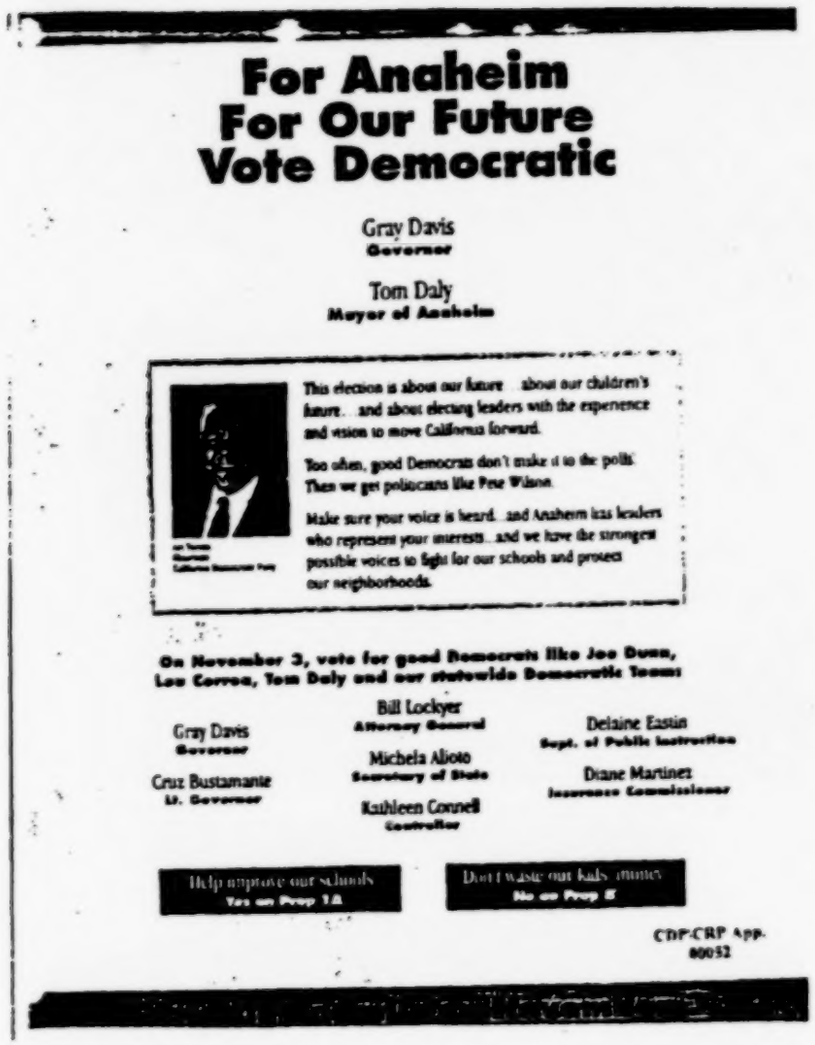
two strong voices

[redacted]

[redacted]

CDP\CRP App.
00051

[Bowler Dec. Ex. E; 3 PCS CDP 51]



For Anaheim
For Our Future
Vote Democratic

Gray Davis
Governor

Tom Daly
Mayor of Anaheim

This election is about our future ... about our children's future ... and about electing leaders with the experience and vision to move California forward.

Too often, good Democrats don't make it to the polls. Then we get politicians like Pete Wilson.

Make sure your voice is heard ... and Anaheim has leaders who represent your interests ... and we have the strongest possible voices to fight for our schools and protect our neighborhoods.

On November 3, vote for good Democrats like Joe Dunn, Lou Correa, Tom Daly and our statewide Democratic Teams

Gray Davis
Governor

Cruz Bustamante
Lt. Governor

Bill Lockyer
Attorney General

Michela Alioto
Secretary of State

Kathleen Connell
Controller

Delaine Eastin
Supt. of Public Instruction

Diane Martinez
Insurance Commissioner

Help improve our schools
Yes on Prop 1A

Don't waste our kids' money
No on Prop E

CDP:CRP App. 00052

[Bowler Dec. Ex. E; 3 PCS CDP 52]

Pete Wilson's Republicans have no shame.

First the attacked us with Proposition 187, which denies immigrants their rights and opportunities.

Then they attacked us with more propositions, which deny our children access to schools and universities.

Pete Wilson's Republicans have supported laws, which would deny citizenship to children born in this country, and increases to supplemental social security for senior citizens.

Now they have a hand-fun of sellouts that are trying to convince us to vote for Pete Wilson's Republican Party's candidates.

They will not deceive us.

We know that the Democratic Party has fought for our rights.

Superintendent for Public Schools Delaine Eastin is better for our children.

Gray Davis, candidate for Governor, is better for our state.

Cruz Bustamente, candidate for Lieutenant Governor, is better for our community.

Down with sellouts.

Down with Pete Wilson.

Vote for Delaine Eastin, Gray Davis, and Cruz Bustamente.

Paid for by the California Democratic Party.

[Bowler Dec. Ex. O; 3 CPS CDP 76]

[3 PCS CDP 85]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al*,
Plaintiffs,
v.
FEDERAL ELECTION COMMISSION, *et al*.
Defendants.

Civil Action No.: 02-CV-0582 (CKK, KLH, RJL)

CALIFORNIA DEMOCRATIC PARTY, *et al*,
Plaintiffs,
v.
FEDERAL ELECTION COMMISSION, *et al*.
Defendants.

Civil Action No.: 02-CV-0875 (CKK, KLH, RJL)

CONSOLIDATED ACTIONS

REBUTTAL DECLARATION OF KATHLEEN BOWLER

1. My name is Kathleen Bowler. I am the Executive Director of the California Democratic Party (CDP). I have been Executive Director since 1995, but I have been actively involved with CDP since 1980. A number of statements made in various "expert" reports submitted in this matter are either factually inaccurate, or are misleading because they omit critical information. I would like to take this opportunity to respond to those statements. [3 PCS CDP 86]

2. There appears to be a fundamental misunderstanding about the term "soft money" and how that

term is used throughout both the "expert" reports and the fact declarations. It is true that "soft money" is money derived from sources that do not meet the requirements of Federal law, either as to amount or source. In that sense, all money that has traditionally and historically been raised by the state parties that is either from sources prohibited under Federal law, or in amounts that exceed the Federal limits, is "soft money." Notwithstanding this, money was raised by the state parties for state election purposes long before the FECA came into effect, and has continued since the FECA has been in effect. In California, since 1974, that money has been required to be fully disclosed with audits and public reporting of all income and expenditures. By continually referring to "soft money" as meaning non-Federal money raised by the national parties, the "experts" conveniently forget that "soft money" also includes a substantial amount of money that has been raised by state and local parties, and subject to direct state (and, in some cases, local) regulation.

3. The "expert" reports (particularly those of Green, Mann, Magleby, and Krasno & Souraf) also refer to "soft money" as money transferred by the national parties to the state parties primarily for issue advertising. The percentage of "soft money" falling into this category would vary from state to state, as well as by election cycle, but for the California Democratic Party it is not a significant percentage of our total income. For example, in the 95-96 cycle, transferred soft money was approximately $7 million out of total income of $27.7 million; in 97-98, it was approximately $2.8 million out of total income of $27 million; in 99-00, it was approximately $8 million out of total income of $34.2 million; and, as of June 30, 2002, in this cycle it has been only $330,000 of approximately $17.7 million in income. In fact, if you limit the discussion to transfers specifically for issue ads, these transfer numbers would be even lower because money was, in fact, transferred for other activities or, in some cases, was

unrestricted. To discuss "soft money" [3 PCS CDP 3] as if it is only the amounts transferred from the national parties, and to exclude the substantial amounts of state money raised by state parties on their own, both before and since the adoption of FECA, is extremely misleading. In addition, focusing only on the transferred money (and the loss of those transfers) in examining the impact of the BCRA, and excluding an examination of the effects BCRA on the states' own fundraising, results in a significant distortion of those effects.

4. CDP has long raised money in accordance with California state law for use in California elections. The money raised and the expenditures made are primarily for state and local election activity. As I stated in my Declaration, CDP has significant overhead and administrative costs that exist irrespective of Federal elections. These expenses run in the neighborhood of several million of dollars per year. We also have significant voter registration and get-out-the-vote activities that take place irrespective of Federal elections. These activities, particularly our direct mail program in support of state and local candidates *that do not mention federal candidates* cost approximately $7-8 million per cycle, and can run higher depending on the number of statewide offices and targeted legislative races on the ballot. In addition, since the adoption of Proposition 34 and a new campaign finance regime, party spending for candidates does not count against their voluntary spending limits; this is already creating pressures for increased State party spending to offset the lower campaign spending. Finally, unlike the Federal system, California has term limits which creates a constant turnover of seats, and a large number of competitive races in which to participate. In addition to candidate support, CDP also spends significant amounts of state (i.e., "soft") money on state and local ballot measures. All of these expenses existed before the issue advocacy transfers began in 1996, and all were paid for with

money raised by the state party for its state activities. The "experts" have stated that the BCRA will simply return the parties to the "pre-soft money world" (Magleby, 55-56); that soft money is not being used exclusively or primarily for state and local election activity (Mann, 26); that it is a [3 PCS CDP 88] "lie" that money is being used for purposes other than influencing federal elections (Mann, 35); or that the "substantial transfers" of soft money to states make them "virtual agents" of the national party committees (Krasno & Souraf, 38). None of these statements are true. I can only assume that these individuals are either completely unaware of the historical and ongoing state party activity in a state like California, or that, in their exclusive focus on soft money transfers from the national committees, they have completely lost sight of the state parties' fundraising and expenditure experiences before those transfers began.

5. This failure to take into account the state parties' activities appears to be compounded by their lack of understanding about the scope and effects of the BCRA. They all apparently understand that it will stop the transfers of "soft money" for "issue ads," but they do not understand that it will also limit the raising of state money by state parties by imposing the same dollar limits on those contributions as are imposed on Federal contributions in direct contradiction to state campaign finance law. The effect of the Levin amendment limits in California will be to eliminate approximately $10-13 million in contributions per cycle. *This is not money transferred by the national party; this is money raised by contributions in accordance with State law, and which would otherwise be available for state election activities.* The "experts" appear to believe that state party contributions are only limited for "Federal" election activities. Again, they do not understand the scope of the BCRA, and therefore, their statements are wrong. Under BCRA, virtually all election activity – Federal, state or local – will be "Federal" because the

BCRA defines it that way. All of CDP's mail for its State candidates will be considered "GOTV" activity (and therefore "Federal"); virtually all voter registration activity will now be "Federal;" all generic party-building activity will be "Federal;" and any broadcast communications (e.g., a radio ad in support of a ballot measure) will be "Federal." In fact, we have identified direct contributions to state candidates and convention expenses as the *only* two areas in which state [3 PCS CDP 89] money may clearly and safely be spent after the BCRA goes into effect.

6. The net result is that the BCRA defines virtually all state and local party election-related activity as "Federal" and then imposes the Federal limits on state party contributions without regard to the costs of running state campaigns, particularly in a state like California. When Krasno & Souraf state that the BCRA would restore the parties' ties to the local electorate and free them from the "dole" and intervention and control by national parties (which they term "tough love," at 40), they are woefully inaccurate. CDP's income and expenditures for state and local activities -- completely apart from any national transfers -- is substantial, and would continue at approximately the same level even if the national party transfers were discontinued. However, *the BCRA does not merely discontinue the transfers for issue ads; it goes much further and limits income available for state and local activities.* (On this note, Krasno & Souraf appear to understate the amount spent by state parties on voter mobilization (or GOTV) activities (at 44, fns. 103, 104). In attempting to quantify this activity, they apparently coded certain expenditures as GOTV, but only included other expenditures if they took place in the last two weeks before the election. A substantial amount of GOTV work takes place outside that period, and therefore, their numbers would significantly underestimate the money currently being spent on these activities.) Moreover, the BCRA creates several structural

barriers that will inhibit state/local coordination rather than enhance it. Under the BCRA, state and local party committees may not engage in joint fundraising efforts; they may not transfer funds between themselves; they may not use their most well-known and popular representatives (the candidates and officeholders) to raise money; and, they may not make contributions to 527 organizations which, at least in California, include most of the local Democratic clubs and District-level party organizations.

7. Although the "experts" appear to be stating that the state parties will still have enough money to adequately function at the state and local level (which is not true), they also [3 PCS CDP 90] appear to believe that any revenue shortfall is of no consequence because it will simply "force" the parties to use more volunteers and invest more in local "grass-roots" operations. This is also wrong. We already make substantial efforts to recruit volunteers. We send out several mailings each cycle to recruit volunteers, and we also rely heavily on the local Democratic Clubs and Assembly District (AD) Committees to recruit and coordinate volunteers. We open or support approximately 30 field offices each election cycle. Although we rely heavily on volunteers, we simply cannot get enough volunteers for all the times and tasks that need to be performed. Green is wrong when he claims (with no factual support) that party professionals have little incentive to court political activists (Green, 31). In fact, *we prefer* to use them because they are more enthusiastic and more passionate when they communicate the party's message. He is also wrong when he suggests that the money the state parties spend on other activities implies that grass-roots activity is not important, or that the parties elevate fundraising over other activities (Green, 31). Many of our expenses are directly related to our need to comply with complex Federal and State regulation. Six of our staff persons do only accounting and reporting work. We have three employees engaged in full-time fundraising and contract

out some fundraising work. Again, we do this not because we choose to, but because the laws require us to raise funds in very specific ways, and because contribution limits in general require that you contact a broad base of people to raise the necessary funds within the limits. Indeed, the BCRA itself will require expanded fundraising efforts at a substantial cost to the parties -- costs that will be paid in terms of reduced programmatic activities. Finally, although Green claims that our expenses for mobilization efforts are low (Green, 46-47), it may be partly low because we are relatively successful in recruiting volunteers; if he quantified all of our existing volunteer time, these expenses would be significantly higher.

8. Green characterizes the parties as arguing that voter mobilization activities are [3 PCS CDP 91] "beyond scope of federal authority" because those activities do not directly involve federal candidates (Green, 14). This is inaccurate. We currently allocate all of those activities -- from administrative overhead to voter registration to GOTV activities, including communications -- between Federal and non-Federal accounts. The only activities that we do not allocate are those activities that are specific to State and local candidates. We pay for those activities, not with money transferred from national parties, but from the state (i.e., "soft") money we raise ourselves. Green states that only a small fraction of "soft" money is spent on voter mobilization. Although he is correct if he is referring *only* to soft money transferred to CDP, he is incorrect if he is referrring to CDP's over-all expenditures for mobilization or GOTV efforts. All of our generic GOTV/mobilization efforts that have a mixed State/Federal message are paid for on an allocated basis, which involves millions of dollars of both Federal money and non-Federal money.

9. Green also makes the inexplicable statement that a party's motives for transferring money to tax-exempt organizations is to gain control of these organizations (Green,

17). CDP makes contributions or donations to a number of nonprofit organizations. These contributions (or donations) are quite modest and are done for ideological reasons (e.g., $250 to the Haight Ashbury Food Program; $200 to Sojourner's Women's Center). The vast majority are under $1,000. We make these donations to support the organization, or a particular program of the organization; it is ludicrous to suggest that we are trying to control these organizations. Green is also apparently unaware that ballot measure committees in California are organized as 501(c)(4) organizations, and that the BCRA will prohibit CDP from contributing to these committees either directly, or indirectly with in-kind contributions. Since these organizations exist only for one election, there would be no reason to try to "control" them. Finally, the BCRA also prohibits contributions to 527 organizations. Most of the programs in California that do partisan voter registration, including CDP's Assembly District Committees and the local Democratic Clubs, are organized as 527 [3 PCS CDP 92] organizations. This means (as stated above) that contrary to strengthening the State/local connections of the parties, it is one further way in which the BCRA weakens those connections.

10. Table 1 of Green's report shows a $5,000 limit on contributions to parties in California. This is incorrect. California currently imposes a $25,000 limit on contributions to be used for candidate-related expenses, and places no limit on contributions to be used for non-candidate-related purposes such as administrative expenses, voter registration, generic GOTV, and ballot measures expenditures. Green may be referring to a previous law, Proposition 208, that was adopted in 1996, but was enjoined approximately one year later on constitutional grounds by the U.S. District Court. CDP's experience under Proposition 208, which imposed somewhat lower limits on the parties than the BCRA/Levin amendment, may be informative. Contrary to the opinions of all the

"experts" here, the parties did not "adapt." CDP's income was reduced to under $500,000 for that year. We significantly reduced staffing levels, and had little money for any programmatic activities. Luckily, this occurred in a non-election year, so it did not directly impact the election the following year, but I have no doubt that had it been in effect, all of CDP's activities -- voter registration, GOTV, generic party-building and, of course, its candidate support would have suffered dramatically.

11. Finally, Green speculates that "[i]f recent trends in campaign spending should be halted or even reversed by BCRA, it is unlikely that either democracy or the parties themselves will suffer dire consequences" as they allege (Green, 35). I find Mr. Green's comments unreassuring. First, there is nothing in the BCRA that "halts" or "reverses" campaign spending (unless one concedes that the Levin limit is simply a thinly veiled attempt to impose a spending limit). As the experts acknowledge, other interest groups are ready, willing and able to increase their voter mobilization and candidate-related efforts. While I do not object to them doing so, it is my belief that both democracy and the political parties will suffer dramatically from any campaign [3 PCS CDP 93] finance regime which overtly seeks to reduce the level of party participation in the process of electing candidates.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 7, 2002

/s/
KATHLEEN BOWLER

DECLARATION OF SENATOR WILLIAM E. BROCK

[DEV 6, Tab 9]

The affiant, having been duly sworn, deposes and says:

1. My name is William E. Brock.

2. From 1963 until 1971, I served as United States Representative from Tennessee. From 1971 until 1977, I served as a United States Senator from the State of Tennessee. From 1977 until 1981, I served as Chairman of the Republican National Committee. From 1985 until 1987, I served as Secretary of Labor under President Ronald Reagan. Although I have not been in public office since 1987, I have continued to be a participant in national politics and I am a close first-hand observer of subject.

3. In 1994, for example, I ran for the Senate in Maryland. One conclusion drawn this experience was that the enormous growth of so-called "soft money" in the past decade had allowed both parties to substitute those funds for the more arduous task of grass-roots organizing, thereby inflating costs and devaluing personal participation. Political parties, the essential "connection" between citizens and their government, were weakened. In effect the [2] parties increasingly became conduits for single interest influence rather than for the development of broadly based representative government.

4. On April 29, 1998, a publication called "The Hill" published an article I wrote concerning the deleterious effects of soft money on our democracy and on political parties in particular (Attachment A). The article accurately reflected my views at the time, which were based on first-hand experience. The article continues to reflect my views based on my experience, and I incorporate the views expressed by the article in this Declaration.

5. Large contributions -- of $50,000, of $100,000, of $250,000 -- made to political parties by corporations, labor

unions, and wealthy individuals have an enormously negative impact in at least the following ways:

a. These contributions compromise our elected officials. When elected officials solicit these contributions from interests who almost always have matters pending before the Congress, these elected officials become at least psychologically beholden to those who contribute. It is inevitable and unavoidable. The contributors, for their part, feel they have a "call" on these officials. Corporations, unions, and wealthy individuals give these large amounts of money to political parties so they can improve their access to and influence over elected party members. Elected officials who raise soft money know this.

b. The appearance of corruption corrosive and is undermining our democracy.

6. The reliance of the major parties on large soft money donations does not in fact strengthen the parties, it weakens them. The focus on raising and spending soft money to affect federal elections divorces both the national and state parties from their roots. The money by and large is not used for "party building." To the contrary, the parties by and large use the money to help elect federal candidates -- in the Presidential campaigns and in close Senate and House [3] elections. Far from reinvigorating the parties, soft money has simply strengthened certain candidates and a few large donors, while distracting parties from traditional and important grassroots work.

7. I warmly agree with those who say that political parties perform extremely important functions in our democracy. Based on my experience, however, I disagree with those who say soft money is necessary to build parties. Parties ably performed their unique functions in our political system before they became awash in soft money. And they can again perform those functions -- indeed, they can perform them better and with more integrity -- without reliance on soft money. The parties can and do raise large

amounts of hard money, i.e., money that complies with federal requirements.

8. It does no good to close the soft money loophole at the national level, but then allow state and local parties to use money from corporations, unions, and wealthy individuals in ways that affect federal elections. State and local parties use soft money to help elect federal candidates both by organizing voter registration and get-out-the-vote drives that help candidates at all levels of the ticket and by using soft and hard money to run "issue ads" that affect federal elections. Therefore, for soft money reforms to be truly effective, it is vitally important to require the use of hard money at the state level to pay for activities that affect federal elections.

9. As noted, I have been a candidate in seven federal campaigns and, as Chairman of the RNC, I was deeply involved in many federal election campaigns. I am therefore fully familiar with the basics and the nuances of campaign advertising in such campaigns. Citizens are bombarded by campaign ads funded with soft money, but are told that these are not related to the candidates' campaigns. This conduct breeds an unhealthy cynicism in the electorate, which [4] generally harms our democracy and which specifically undermines the credibility of the major political parties.

10. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DECLARATION OF SENATOR DALE BUMPERS

[DEV 6, Tab 10]

Background

1. My name is Dale Bumpers.

2. I served two terms as Governor of Arkansas, from 1971 to 1975. After my service as Governor, I served as a Member of the United States Senate, representing the State of Arkansas, from 1975 to 1999. After I retired from the Senate, I spent one year directing the Center for Defense Information, a nonprofit think-tank based in Washington, D.C. I have also taught classes at the University of Arkansas and other schools.

3. Currently I practice law in Washington, D.C., at Arent Fox Kintner Plotkin & Kahn, PLLC, where I provide strategic counsel and advice to corporations, trade associations, and nonprofit organizations on a broad range of international and government relations issues. [2]

The Role of Political Parties

4. Political parties' primary interest is in supporting and electing their candidates. The parties are money raisers, and they spend the money they raise to assist their candidates in campaigns. Party committees focus their resources on competitive races. Unlike some other groups that are active in the political process, party committees keep information on the opposing party so they can tell their candidates about things like their opponents' legislative votes and public statements, and thereby help them win elections.

5. Political parties do not have economic interests beyond their broad view that the public generally prospers more as a result of the election of that party's candidates.

6. I have never been contacted by the party about any issue, and have never been lobbied by the party to take a certain position on an issue or matter before Congress. In my view, the party is not the leader on policy issues, and it is

not very issue-oriented. It is the Members who provide leadership on policy issues, and the party is a follower that promotes those policies in order to elect its candidates. I am not aware that the party has any interest in the outcome of public policy debates that is separate from its interest in supporting and electing its candidates.

7. Parties expect Members to raise money for the party. At weekly caucus meetings, for example, party leaders pressured Members to raise funds. Party leaders would also recognize Members who helped raise significant amounts of money. This money is normally raised from those who are involved in donating to Democratic or Republican causes in the home states of these Members. [3]

Members of Congress and Soft Money Fundraising

8. In my experience, it is a common practice for Members of Congress to be involved in raising both hard and soft dollars for the national party committees, at the parties' request. I have raised hard money for the Democratic Senatorial Campaign Committee ("DSCC") and have attended any number of fundraising functions for both the Democratic National Committee ("DNC") and the DSCC. While I have not raised soft money for the Party, occasionally the Party had asked me whether certain people I knew would be willing to make large soft money donations.

9. Parties expect Members to call some of the big donors in their home states and, for example, suggest sending the DNC a donation of $15,000 for a table at a DNC dinner. These are often donors who have previously contributed to the Member's campaign, and some of them may be "maxed out" donors who have already contributed the maximum allowable amount of hard dollars to that campaign.

10. When a Member raises money for the party, there is a sense on the part of the Member that he or she is helping his or her own campaign by virtue of raising that money. When Members raise funds for the DNC, it helps the DNC

perform its function of keeping tabs on statements, policies, and votes of opposition party members and groups.

11. Members who raise money for the DSCC expect some of that money to come directly back to them. Part of this unwritten but not unspoken rule is that if you do not raise a certain amount of money for the DSCC, you are not going to get any back. The DSCC does not give a candidate the maximum allowed unless he or she has raised at least a certain amount for the DSCC. The last time I ran, I remember that the DSCC [4] promised to give every candidate a minimal amount of money regardless of whether he or she did any fundraising for the DSCC. To get more than the minimum, however, you had to raise money for the DSCC. For example, if I had helped the DSCC raise the maximum amount it could legally expend on my behalf, I certainly would have expected the maximum to come back to me.

12. For Members there would not be any real difference if the funds they solicited were for themselves or for the DNC or DSCC, or if they were hard or soft money donations. Members and donors understand that donations to the party committees help Members.

Soft Money Donors

13. People give money to the DNC, DSCC, and the state parties for the same reasons that they give to individual Members. Some feel that they are ingratiating themselves with the Member who is soliciting the donation. Others contribute out of friendship with the Member who is soliciting the donation, or because they are true believers who simply want to support Democratic causes. People will only give money to the parties when they are solicited by a Member they respect, like, or know out of friendship, and I do not think they normally expect to have any say as to how the donation will be spent.

14. Although some donors give to Members and parties simply because they support a particular party or Member,

the lion's share of money is given because people want access. If someone gives money to a party out of friendship with a Member, that donor may never ask for anything in return. However, although many people give money with no present intention of asking for anything in return, they know that if they ever need access they can probably get it. Donations can thus serve as a type of insurance. [5]

15. Giving soft money to both parties, the Republicans and the Democrats, makes no sense at all unless the donor feels that he or she is buying access. The business community makes such donations quite often.

16. I believe that, in many instances, there is an expectation of reciprocation where donations to the party are made. Donors also often give large soft money donations when legislation that affects them is being considered in Congress. For example, when the Senate considered the Patients' Bill of Rights, the insurance companies began loading up the Republican Party with soft money.

17. Likewise, I do not think the tobacco industry gives the Republican Party a million and a half or two million dollars because they expect them to take a very objective view on tobacco issues. I think the tobacco industry got what they expected when, after they had given scads of money to both the Republican National Committee and the National Republican Senatorial Committee, a majority of Republicans killed the tobacco bill. You can just look at a series of events: the money is given to the Republicans, the party begins to take a stand, Members of the party start filibustering any efforts by Democrats to bring up the bill. It was the best investment that the tobacco industry ever made. Those things are not written out or spoken, that is just the way it happens.

Effects of Soft Money Donations

18. I doubt there is a politician on Capitol Hill who would deny that soft money donations get people access. The unwritten law in the Congress is that those who have

consistently been good party members and good donors can get access. They can get their phone calls returned. I have heard that some Members even keep lists of big donors in their offices. [6]

19. I think a lot of politicians have a little filter in their ears when a legislative vote comes up. They quite often run that vote through their memory filter and determine how the vote will affect jobs in their state, and how it will affect the supply of donations, in terms of who is likely to be offended and who is likely to be helped by the vote. That is just human nature, and there is nothing illegal about it.

20. I think it would be naive in the extreme to suggest that, for example, someone who gave $20,000 to the DSCC at the solicitation of a Member would not get his or her phone call returned, or have access to the Member who solicited the donation. And you cannot be a good Democratic or a good Republican Member and not be aware of who gave money to the party. If someone in Arkansas gave $50,000 to the DNC, for example, I would certainly know that. Likewise, if someone gives $100,000 to the Presidential inauguration committee, that is something politicians and party officials keep in their memory bank.

21. Soft money gives big corporations and the very wealthy an inordinate advantage over others in the legislative process. If these corporations or individuals have given $100,000 to either or both parties, their chances of securing a change in legislation in Congress is exponentially increased. Often donors seek legislative changes so that they or their business can reap large financial gains.

22. The effect of soft money on the legislative process is sometimes obvious, as with the tobacco legislation or the Patients' Bill of Rights. Other times, however, there are more subtle ways to affect legislation that do not receive media attention. For example, Members may choose to filibuster a bill which would adversely affect an industry that

[7] has given large soft money donations to their party, or a committee chairman may similarly stall a bill.

23. Constituents do not distinguish between money that candidates raise for their own campaigns and money they raise for the party committees.

The Burdens of Fundraising on Members of Congress

24. The rise in soft money giving has increased the burden placed on Members to spend time raising funds. The great majority of Members find it anathema to spend such an inordinate amount of their time trying to raise money. But with the rise of self-funded millionaires running for election to Congress, Members do not have a choice but to spend more and more time raising funds.

25. The burdens of fundraising are sometimes a reason that Members choose to retire. For example, I remember when Tom Eagleton made a speech on the Senate floor announcing that he would not be running for reelection. I went up to him afterwards and said, "Tom, why are you doing this? You're a great Senator and we need you." He responded by saying that he was tired of going around with his tin cup out. I, too, detested fundraising, and that was one reason I decided not to seek reelection.

Issue Advertisements

26. Soft money also finds its way into our system through so-called "issue advertisements" sponsored by outside organizations that mostly air right before an election. Organizations can run effective issue ads that benefit a candidate without coordinating with that candidate. They have experienced professionals analyze a race and reinforce what a candidate is saying. These ads influence the outcome of elections by simply stating "tell him [the opponent] to quit doing this." The "magic words" test is [8] completely inadequate; viewers get the message to vote against someone, even though the ad may never explicitly say "vote against him."

27. Members or parties sometimes suggest that corporations or individuals make donations to interest groups that run "issue ads." Candidates whose campaigns benefit from these ads greatly appreciate the help of these groups. In fact, Members will also be favorably disposed to those who finance these groups when they later seek access to discuss pending legislation.

28. Politicians especially love when a negative "issue ad" airs against their opponents. If these politicians did not feel that the issue ads were helping them, they would call the people sponsoring them and tell them to stop, or they would hold a press conference and angrily denounce the ads. But that rarely, if ever, happens.

29. One of the most insidious things about soft money "issue ads" is that the ordinary viewer doesn't have a clue as to who paid for the ad. I first noticed this problem in 1996, when I saw several issue ads before it ever dawned on me that those ads were not being paid for by the candidate. What caused my curiosity to be piqued was the ending tag [9] lines on those ads: "Call so and so and tell him to quit doing so and so." At first I just assumed that the ads were paid for by the opposing candidates' campaign funds, though I did think it was very strange that the opposing candidates' names were never mentioned. In those ads, everything is honed in on the candidate the ad is trying to defeat. At that time, I did not know that they were soft money spots. Of course it didn't take long for me to inquire and figure out that they were. However, my view is that 95 to 98 percent of the constituents today who watch ads produced by soft money think nothing of the tag line saying to call someone and never realize those are soft money ads. These ads are clearly election-related.

30. I considered soft money-funded issue advertising in 1996, and I consider it now, to be the most insidious thing going on in politics. Soft money spent on issue ads is a way to circumvent the campaign contribution limits. A thousand dollars is the most a candidate can take from an individual,

but you can take a gazillion in soft money and run those kinds of ads, which make a mockery of the campaign finance laws. In this respect, the current system is rotten to the core, and in my opinion, it is awful for the body politic.

Lobbyists and Political Donations

31. As a government relations consultant, I have seen firsthand how campaign finance money affects the legislative process. My clients expect me to advise them on what is likely to happen in Congress and especially what actions they should take when legislation that affects them is at a critical stage. Having spent 24 years in the Senate, I often know exactly what Congress is going to do and why. Oftentimes, campaign finance money is the reason why certain legislation either passes or dies.

32. Like other governmental relations consultants, I will occasionally discuss political donations with my clients. Sometimes I advise my clients to make donations; other times, my clients approach me about political giving. I tell my clients that they should contribute to the Members who can do the most good for them, such as the Chairman or Ranking Member of a committee that has jurisdiction over issues affecting them.

33. From time to time, I will also recommend to clients that they participate in a political fundraiser. Lobbyists often receive invitations for fundraising events to pass on to their clients. In fact, I receive an average of five fundraising invitations per day from [10] Members or parties. Both Members and the parties pressure lobbyists and their clients to attend these events and make donations.

34. Although I am loathe to perpetuate what I see as a corrupt process, I still encourage my clients to attend fundraisers and make donations. The truth is that you cannot be a player in Washington unless you immerse yourself in the current system.

Conclusion

35. I do not accept the specious claim that free speech rights will be infringed by the new McCain-Feingold law. I am a staunch defender of the Bill of Rights, and I fully support the new law.

36. Our current campaign finance system is crass, unholy, and destructive of democracy. People are dreaming if they think a democracy can survive when elected officials and the bills they consider are beholden to big donors. Currently, you can't find a better method of ensuring government help from time-to-time than to make significant soft money donations. The vast majority of citizens do not have the resources to donate soft money, and they are entitled to as much consideration as those that do. James Madison would be whirling in his grave if he saw how corrupt our system has become.

37. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

[1 (9 PCS/MC 890)]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Senator Mitch McConnell, *et al.*,	)	
Plaintiffs,	)	Case No. 02-0582
v.	)	(CKK, KLH, RJL)
	)	*All consolidated*
Federal Election Commission, *et. al.*,	)	*cases.*
Defendants.	)	

Declaration of Stephen L. Dasbach,
Ronald Crickenberger, and Dominick Dunbar
of the Libertarian National Committee

The Declarants declare the following on personal knowledge:

1. Stephen L. Dasbach is a U.S. citizen and resident of Virginia. He is Senior Advisor, former Executive (National) Director, and former Chair of the Libertarian National Committee ("LNC"), and he hereby testifies on personal knowledge regarding all paragraphs of this Declaration.

2. Ronald Crickenberger is a U.S. citizen and resident of Virginia. He is Political Director and former National Director of the LNC, and he hereby testifies on personal knowledge regarding all the paragraphs of this Declaration, except paragraphs 9, 17, 21, 23, and 40.

3. Dominick Dunbar is a U.S. citizen and resident of Virginia. He is Operations Director and former National Director of the LNC, and he hereby testifies on personal knowledge regarding all the paragraphs of this Declaration.

4. The Libertarian National Committee, Inc., is the governing body of the Libertarian [2 (9 PCS/MC 891)] Party® at the national level. The LNC is incorporated in the District of Colum-

bia as a nonprofit corporation, and it is governed by I.R.C. § 527. The LNC seeks to represent the principle that all individuals have the right to exercise sole dominion over their lives, and have the right to live in whatever manner they choose, so long as they do not forcibly interfere with the equal right of others to live in whatever manner they choose. *See* Exhibit B, which we hereby verify is a true and correct copy of the "Libertarian National Committee: Policy Manual" (Dec. 20, 2001 (1939-69; Exhibit M, which we hereby verify is a true and correct copy of Libertarian National Committee Corporation Certificate, Articles of Incorporation, and Annual Report (1992-2002); Exhibit L, which we hereby verify as a true and correct copy of Libertarian National Committee tax forms (1983-91). Declarants also adopt and verify as true and correct all documents available at www.lp.org, including, without limitation: bylaws, platform, policy manual, convention schedules, issues statements, press releases, membership forms, and convention programs (1996, 1998, 2000) and all documents relating to the LNC available at www.fec.gov. Notwithstanding its specific objections to the "Bipartisan Campaign Reform Act of 2002" ("BCRA"), the LNC and Libertarian Party® oppose all federal campaign finance laws, and reserve the right to mount a broad challenge to the constitutionality of these laws in the future.

5. The impact of the BCRA on the LNC is significantly greater than on the Democratic National Committee ("DNC") or Republican National Committee ("RNC"). The Libertarian Party is, of course, much smaller than either of the major parties. The LNC has only eleven full-time employees; it has one half-time employee and three part-time student employees. Only ten state Libertarian parties have any paid employees, many of them only part-time. In size and administrative sophistication, the LNC is similar to a typical state affiliate of the RNC or DNC.

6. The basic administrative burden imposed by Federal Election Campaign Act of 1971 [3 (9 PCS/MC 892)] ("FECA") requirements remains constant on political parties, regardless of size, so that the LNC must almost certainly expend a relatively higher percentage of its resources on compliance with FECA than the RNC or DNC – a situation that will be exacerbated by the further extension of FECA requirements imposed by the BCRA.

7. Further, the LNC has less relative expertise and sophistication and a greater likelihood that it will commit errors in administering the requirements of FCA because LNC's small staff cannot specialize to the degree that is possible for the RNC or DNC. The BCRA thus would only magnify the relative administrative inefficiency of the LNC, resulting in an even greater competitive advantage for the RNC and DNC. For example, the LNC's current office manager, Dominick Dunbar, acts as Assistant Treasurer, preparing all FEC reports. In addition, he performs the following administrative functions: As Controller, he personally reconciles the balance sheet, oversees payables and receivables, and manages cash flow; as Office Manager, he manages the administrative staff of two; as Human Resource manager, he prepares payroll, and administers 401(k), health insurance and benefit plans; as Network administrator, he maintains and upgrades a 13 station network; as Database administrator, he prepares lists for in-house mailings and phone campaigns and updates to the rental list, and oversees contract programmers for system debugging and enhancements; as Customer Service Manager, he manages and trains two customer service reps; as Telemarketing Manager, he manages two part-time telemarketers.

8. Because the majority of state Libertarian parties operate with volunteer staffs, and lack full-time or professional staffs, they rely on the LNC for assistance in meeting FECA requirements.

Because BCRA will involve greater regulation of state parties under FECA, it will thus create an even greater administrative burden on the LNC. To the extent that the LNC will be unable to meet state party needs, the BCRA would effectively result in destruction of state [4 (9 PCS/MC 893)] party campaign efforts and some state parties themselves.

9. During the 1999-2000 FEC reporting cycle, only 10-15% of LNC funds were placed in its "soft money" account, a far lower percentage than for the RNC or DNC, which place more than half their funds in "soft money" accounts. At present, the LNC has three principle sources of soft money: 1) list rental fees ($39,558 in 2001), 2) dues paid through state affiliates and forwarded from the state affiliates to the LNC ($75,239.77 in 2001), and 3) advertising in the *Libertarian Party® News* and elsewhere ($61.630.25 in 2001). According to the FEC's website, only seven (7) of the 51 state affiliates of the national Libertarian Party have registered as political committees with the FEC, subject to FECA requirements. Hence, under BCRA, any of the other 44 affiliates that desire to collect and send to LNC $1,000 or more per year (or engage in federal campaign activities that would be aggregated with payments to LNC in order to total $1,000 per year) would be required for the first time to register as political committees with the FEC, subject to FECA requirements. Very little of the soft money received by LNC is from any corporate source (if funds from renting lists or advertising in the *Libertarian Party® News* are discounted) or from large individual contributions. In 2002, for example, only one individual contribution exceeded $20,000. During the past six years, no more than four donors to the LNC have aceeded this limit in any one year. Thus, the supposed potential for widespread abuse of soft money by national parties that motivated the BCRA simply does not exist or arise with regard to the LNC.

10. Although it would be subject the BCRA, no federal officeholder has been a candidate of the Libertarian Party, and no candidate of the Libertarian Party has ever won a race for federal office. Thus, no Libertarian Party candidate has ever been exposed to the occasion for corruption that the BCRA is supposed to protect against. The most that any Libertarian candidate for the U.S. Senate has garnered is 12% of the vote; the most that any Libertarian [5 (9 PCS/MC 894)] candidate for the U.S. House has garnered is 38% of the vote in a two-way race. In the 2000 general election, Libertarian Party U.S. Senate candidates averaged less than one (1%) percent of the vote, and Libertarian Party U.S. House candidates averaged less than two percent (2%) of the vote. Yet, often, the Libertarian Party candidate offers needed opposition to a Republican or Democratic Party candidate. For example, in the 2002 general election, four U.S. Senate races are being contested by only one major party candidate (no Democrat in Kansas, Mississippi and Virginia; no Republican in Massachusetts). A Libertarian is on the ballot in Kansas and Massachusetts.

11. Unlike federal candidates of the Republican or Democratic Parties, Libertarian Party federal candidates know that they have only a remote chance to win federal office, and they use their candidacies for running educational/issue advocacy campaigns that concentrate on advancing libertarian principles. *See* the following Exhibits attached hereto, which we hereby verify to be true and correct copies: Exhibit C ("Libertarian Political Action: Techniques for Effective Campaigning") (1970) (only cover page numbered); Exhibit D ("Libertarian Party 2000 Issue Briefing Booklet") (1971) (only cover page numbered). Federal candidacies are important to the advancement of libertarian principles and the Libertarian Party because the issues that draw voters to the party are primarily federal. *See* the following Exhibits, which we hereby verify to true and correct copies: Exhibit V ("Nolan for Congress - 'Prisoners' and 'Cancer'" ad scripts)

(2045); Exhibit NN (Libertarian Party radio ads in .wma format on two 3.5 diskettes) (2143-44). For example, the Libertarian Party's presidential campaigns very effectively garner publicity for libertarian principles, and recruits to the Party, even though these campaigns have only a remote chance of winning the election. *See* the following Exhibits [6 (9PCS/MC 895)] attached hereto, which we hereby verify to be true and correct copies: Exhibit QQ (VHS tape of Libertarian Party Browne for President TV ads) (2174); Exhibit JJ ("Campaign Update: Our last chance to smash the media 'Browne Out'!") (2123-30).

12. Libertarian Party candidates also address issues that Republican and Democratic candidates tend to avoid as controversial. On the whole, Libertarian candidates place much more emphasis on issues and political philosophy, while Republican and Democratic candidates stress personal image, qualifications, name recognition, and electibility. The Libertarian Party will also raise issues related to its principles without any express reference to any Libertarian Party federal candidate when major party candidates are not addressing these issues. Thus, earlier this year, using soft money, the Libertarian Party ran anti-drug war advertisements in *USA Today* and the *Washington Times* to lampoon advertisements being run by the federal government in an attempt to link the drug-war to anti-terrorism efforts. *See* Exhibit E ("U.S. Drug Czar John Walters" ad) (1972), which we hereby verify as a true and correct copy. Similarly, using soft money, the Libertarian Party holds bi-annual national conventions. Off-Presidential election year national conventions are focused on issue advocacy, educational issues and the elction of Libertarian Party officers. They have nothing to do with the nomination of federal candidates.

13. The impact of the BCRA on the Libertarian Party thus severely hamstrings the Party's issue advocacy activities that are its focus, without serving the interest in preventing corruption or

the appearance of corruption that the BCRA purports to serve. Since the LNC does not seek, accept, or use any federal funds to conduct its campaigns, and since the effect of the administrative burdens imposed by the BCRA are disproportionately far greater for smaller political parties, the effect of the BCRA is to dramatically affect the ability of the Libertarian Party to compete with the major parties. [7 (9PCS/MC 896)]

14. Libertarian Party federal candidate campaigns are focused on fostering party growth and at gaining ballot access. In most states, a certain percentage of the vote must be achieved to attain or retain ballot presence. Often this milestone is achieved by one of the Libertarian Party's federal candidates. It is often crucial that federal candidates achieve this percentage since, otherwise, in the great majority of states there is an immense monetary cost involved in petitioning for thousands, tens of thousands, or hundreds of thousands of voter signatures in order to regain ballot status. If funds and volunteer efforts are diverted to regaining ballot status, then the loss of those funds and volunteer efforts severely diminishes the opportunity to use the resulting campaign to advance libertarian principles. It also severely diminishes the ability to elect candidates to non-federal offices. Again, the focus is not on election of federal candidates, but in assuring that there will be an effective electoral forum in which federal candidates might advocate libertarian principles. At the state level, the Libertarian Party has been effective in electing non-federal candidates (more than 300 elected Libertarians currently serve), but this success would be threatened by the additional regulation.

15. In sum, the LNC and Libertarian Party have in the past and intend in the future to solicit, receive, and use soft money and hard money to advocate issues, and as a means to this end support Libertarian Party candidates in campaigns for federal and state elective office. The LNC has in the past and intends in the

future to solicit, receive, and use soft money funds to finance issue advocacy communications. The LNC has in the past and intends in the future to transfer soft money funds to state-affiliated parties that have in the past and intend in the future to receive such funds. The BCRA burdens or obstructs all of these activities, causing significant harm to the Party's issue and express advocacy efforts.

16. Similarly, the LNC has in the past and intends in the future to communicate with [8 (9 PCS/MC 897)] candidates for federal office and with federal officeholders and to spend soft money for issue advocacy communications regarding issues supported by such candidates and officeholders. As it has in the past and intends in the future, the LNC has made and intends to make both independent and coordinated expenditures on behalf of candidates for state and federal office after the party's candidates are nominated and to transfer funds between national, state, and local party committees. The LNC has in the past and intends in the future to use "soft money" to finance its ballot access drives and to finance all of its national conventions, which are held every other year. As it has in the past and intends in the future, the LNC solicits funds for and makes donations to IRC § 527 organizations. It intends in the future to solicit funds for and make donations to IRC § 501(c) organizations that make expenditures and disbursements in connection with federal elections. Again, the BCRA burdens or obstructs all of these activities, causing significant harm to the Party's issue and express advocacy efforts.

17. Special burdens are placed on the LNC and Libertarian Party by the BCRA's ban on soft money contributions to national parties without addressing any abuse that receipt of soft money supposedly occasions for the LNC. The LNC presently uses soft money accounts to avoid the burdensome costs incurred in administering "hard money" funds subject to FECA requirements. Rather than discriminating among funds received for certain activities, the LNC simply places all funds received for these

activities in its soft money fund. The BCRA would dramatically increase administrative costs by requiring the LNC to discriminate among the funds to determine which funds the LNC would accept. It would deny the LNC funds by requiring it to refuse contributions it determines it cannot accept.

Libertarian Party® News

18. The LNC publishes a monthly newspaper, the *Libertarian Party® News*. *See* [9 (9 PCS/MC 898)] Exhibits P-1 to P-6, which we hereby verify are true and correct copies of the *Libertarian Party® News* for various months (2024-29) (only cover pages numbered). The effect of the BCRA would be to forbid certain receipts arising from the paper's publication because they are soft money and to increase administrative costs for the *Libertarian® Party News* across-the-board.

19. The LNC presently accepts advertising. See Exhibit O, which we hereby verify is a true and correct copy of samples of *Libertarian Party News* ad invoices (2009-23). Under BCRA, however, it would be required to refuse advertising that it presently accepts from both for-profit and not-for-profit corporations. Administrative costs would be increased by requiring the LNC to investigate whether certain advertisements are paid for by corporations or not. Moreover, the BCRA would strongly discourage advertising by state or local candidates in the *Libertarian Party® News* since any such candidate would then be subject to FEC filing requirements, because their funds would be deemed to be expended for federal activities..

20. Similarly, the BCRA would forbid the *Libertarian Party® News* to accept any subscription from any for-profit or not-for-profit corporation library.

21. The cumulative effect of the BCRA is to significantly increase the costs of administering subscriptions and advertising income for the *Libertarian Party® News* by requiring careful scrutiny of the source of advertising and subscription funds.

Further, it would require two transactions in the LNC's current membership database system instead of one for subscriptions paid for by one person for the benefit of another: The person who paid for the subscription would have to be separately listed with credit for a contribution, while the subscription provided would have to accounted for elsewhere in the record in the name of the person who receives the subscription. Further, it would require two transactions in the LNC's current [10 (9 PCS/MC 899)] accounting and database systems instead of one for advertising income received: The advertising payment received would have to be entered into the business accounting system, and also accounted for elsewhere in the membership database as a contribution in the name of the person who makes the advertising payment for aggregation purposes. Currently, the *Libertarian Party News* accounting system is not integrated at all with the contribution database used for FEC hard money reporting. Ultimately, this would require a substantial customized rewriting of the software used by the LNC for its bookkeeping and database systems.

22. Another effect of the BCRA would be significant loss of revenue from potential corporate subscribers and advertisers to the *Libertarian Party® News*, as well as from potential non-federal campaign committee advertisers that might be required to comply with burdensome FEC filing requirements should they advertise.

23. The punitive burden imposed by the BCRA on the LNC would not be relieved by treating subscription and advertising funds as hard money. Similar administrative costs would still be incurred by requiring accounting for receipts to avoid exceeding individual and aggregate cumulative limits imposed on hard money contributions by the FECA. For example, the LNC would have to account for and total payments received from a person, whether from advertising or from free-will donations, in order to

determine whether that person had exceeded contribution limits. Individual and aggregate limits would also restrict the amount of advertising, subscription, and other hard money contributions that any individual might make to the LNC, thus resulting in potential loss of revenue to the LNC.

Mailing List Rental

24. The LNC presently rents its membership list through a corporate broker to both individual and corporate third-parties. *See* Exhibit H ("Order Clearance Request"re Libertarian [11 (9 PCS/MC 900)] Party list rental (1976)); Exhibit I ("Revision: 08/26/99" re mailing for Libertarian Party (1977)); Exhibit J (Libertarian Party List Rentals receivable reports (1978-80)); Exhibit K (Aug. 6, 1984, letter from Theodore Troy to Libertarian Natl. Comm. re "Bulk Mail Information" as a "qualified political committee" (1981-82)), which we hereby verify are true and correct copies of these documents. Any funds generated are placed in the soft money account. The effect of the BCRA would be to forbid certain receipts arising from mailing list rental because they are soft money and to increase administrative costs for list rental across-the-board.

25. Because the BCRA forbids the LNC to accept corporate funds, it could not continue to use a corporate list broker. The corporate broker would collect list rental funds from third-party renters, then pay the LNC with its own corporate funds for use of the list, thus violating the BCRA. The LNC must then attempt to secure the services of a probably less efficient and less competitive list broker that is either an individual or a sole proprietorship in order to avoid receiving a payment from a corporate broker for use of the LNC's list. Due to the individual hard money contribution limits, the LNC would have to hire multiple list brokers, or forgo a substantial amount of income.

26. The alternative of in-house list brokering would be costly and highly inefficient due to lack of sufficient staff and expertise.

The LNC does not have the resources or expertise to "seed" the list with fictitious names in connection with each use, then track the "seeds" in order to assure that the list is not re-used without payment. This and other security services are provided by an independent professional list broker. The LNC is at a serious competitive disadvantage in relation to the RNC and DNC in this regard, because the major political parties might well have the resources to do in-house brokering and secure administration of their lists.

27. Regardless of the character of the list broker used by the LNC, significant [12 (9 PCS/MC 901)] administrative costs and loss of revenue would be incurred because the BCRA forbids receipt of funds from any corporate entity that might rent the list, whether for-profit or not-for-profit corporations, including 501(c)(3) and 501(c)(4) corporations. The LNC's mailing list is often rented by nonprofit corporations, such as the Advocates for Self-Government, Inc., the Reason Foundation, or the National Taxpayers Union Foundation, whose philosophies are attractive to libertarians. Similarly, BCRA forbids receipt of funds for rental of the LNC's list by one person or entity on behalf of another. Moreover, non-federal campaign committees will be strongly discouraged from renting the LNC list because they might then be required to become FEC filing committees because their rental fees would be deemed expenditures for federal activity.

National Conventions

28. The LNC stages bi-annual conventions of the Libertarian Party, with a nominating convention during presidential election years and an educational convention on off-years. The BCRA would prohibit certain funds to be received during off-year conventions and seriously alter the nature of the Libertarian Party's nominating convention.

29. Libertarian Party conventions held in years when there are no federal presidential elections are solely devoted to discussion and advocacy of issues; no candidates for public office are nominated for or selected to run as Libertarian Party candidates at these conventions. They are financed by attendance fees and, in significant part, by exhibit space rentals, advertising in the convention program, and sponsorships of the program and various events by individuals and corporations. *See* Exhibits OO and PP, which we hereby verify to be true and correct copies of the 2000 Libertarian National Convention booklet (2145-72) and 2002 Libertarian National Convention booklet (2173) (only cover page numbered), respectively. But because the BCRA bans receipt of soft money, it bans receipt of income from corporations for exhibit space rentals, [13 (9 PCS/MC 902)] advertising, and sponsorships. The effect is thus to increase fee costs to attendees, thus limiting attendance and perhaps rendering any off-year convention practically unfeasible -- although off-year conventions are intended not as occasions for express advocacy of any federal candidate, but as occasions for issue advocacy, election of LNC officers, platform and bylaws development, and other internal party matters..

30. The BCRA would also forbid any corporation from administering off-year conventions since any receipts arising from administration would amount to forbidden corporate disbursements to the LNC. Increased administrative costs would be incurred during the course of any such convention by the need to distinguish between various sources of contributions. Moreover, there would be significant loss of revenue because there could be no receipts from corporate sponsors or advertisers or from minors. Finally, the LNC suffers a disproportionate disadvantage in such regard because, unlike the major parties, no government funds are provided to LNC for the Libertarian Party's national conventions.

31. For conventions during presidential election years, the BCRA in effect requires administration through a host committee

in order to take advantage of special rules established by the FECA and BCRA to facilitate funding presidential nominating conventions. This changes present Libertarian Party practice, in which conventions are managed by the LNC, and it would require significant loss of potential control of the convention by the national party and significant administrative costs by requiring careful development of contractual relationships. See Exhibit N (Sample National Libertarian Party contract) (2003-08), which we hereby verify to be a true and correct copy.

Material Sales

32. The LNC produces educational materials on libertarian issues for sale to the general [14 (9 PCS/MC 903)] public and to state and local Libertarian Parties and candidates. *See* the following Exhibits, which we hereby verify to be true and correct copies: Exhibit F ("Libertarian Party Outreach Materials for Sale (1973-74); Exhibit LL ("Here's the information you requested..." envelope of documents re Libertarian Party for persons requesting information (2141) (contents not numbered); Exhibit MM ("I Want to Join the Libertarian Party" membership card) (2142); Exhibit Q ("How to use the Self-Government Compass") (2039); Exhibit R ("World's Smallest Political Quiz") (2040); Exhibit S (LNP bumper stickers) (2041-42); Exhibit G ("America's Libertarian Heritage: The Politics of Freedom" by David Bergland) (1975) (only cover page numbered). However, as the result of BCRA, the LNC would be forbidden to receive funds for this service from its own state and local parties and candidates as soft money or as hard money for this service in large amounts because such a large purchase would pose the risk that the state or local party or candidate would have to file with the FEC as a political committee engaging in federal activity. Not only does this represent a significant loss of revenue to the LNC, but it means that the consistency of the libertarian message may be compromised because state and local affiliates will develop materials independently or turn to non-party independent sources for those materials. At the same time, independent development would result in unnecessary duplication of efforts, increase the cost of those materials to users, and destroy the economies of scale in having the LNC produce and provide those materials. Spinning-off production of educational materials to independent profit-making enterprises would involve loss of control of message, as well as trademark and branding. This would significantly increase the cost of the LNC's advocacy of issues.

Membership

33. The national Libertarian Party is a membership organization that requires the regular [15 (9 PCS/MC 904)] payment of dues from members to the LNC. Dues are frequently paid to state-affiliated Libertarian Parties, with a portion to be distributed to the national Libertarian Party, so that those who pay dues may be members of both the state and national parties. Dues are often paid by one person on behalf of another, as a wife might pay for a husband, and are often paid with delays in forwarding them to the LNC. In these circumstances, the funds are appropriately deposited in state affiliates' soft money accounts. Under the BCRA, however, these funds may not be transferred to the LNC, so that members who pay dues in such a manner must be denied membership in the national Libertarian Party. Thus, the BCRA effectively criminalizes the current structure of the national Libertarian Party as a membership organization.

34. Receipt of membership dues as hard money would pose the danger to state affiliates that might become subject to FEC filing requirements as a result of transfer of funds to the LNC. that would be deemed expenditures for federal activity. It would also subject state affiliates to significant administrative burdens although they lack paid or professional staff to assume those burdens.

Contributions for Issue Advocacy

35. Using soft money, the LNC presently conducts numerous issue advocacy campaigns unrelated to any federal candidacy. *See* the following Exhibits, which we verify to be true and correct copies: Exhibit X ("Which political party is 100% pro-gun rights?") (2047-48); Exhibit Y ("Special Report: An Inside Look at the Libertarian Party") (2049-68); Exhibit Z ("Libertarian Solutions: How Libertarians would address some of the most significant political & social problems facing the United States" (2069-2100); Exhibit AA ("Why Libertarians Support Equal Rights for America's Gun Owners") (2101-02); Exhibit BB ("What Happened to Your Family Budget?") (2103-04); Exhibit CC ("Making Your Neighborhood Safe Again") (2105-06); [16 (9 PCS/MC 905)] Exhibit DD ("Towards a More Sensible Drug Policy") (2107-08); Exhibit EE ("Ending the Welfare State") (2109-10); Exhibit FF ("Working to Cut Your Taxes") (2111-12); Exhibit GG ("Is This the New Political Party You've Been Waiting For?") (2113-14); Exhibit HH ("Million Dollar Bill" (on verso "The U.S. Government Spends $1,000,000 Every Five Seconds!") (2115-16); Exhibit T ("The U.S. Government Spends $1,000,000 Every Five Seconds!" ad) (2043); Exhibit U ("This is your breakfast") (2044) ; Exhibit W ("Promises" ad script) (2046).

36. As the result of the BCRA, however, soft money could not be received for this essential purpose of the Libertarian Party, severely hampering its issue advocacy activities that have nothing to do with federal candidacies.

Contributions for Ballot Access

37. Soft money is also presently used by the LNC for ballot access campaigns that do not solely involve candidacies for federal office, but also implicates state and local candidacies. Access to the ballot is essential for efficient advocacy of libertarian principles and advocacy of its views on issues. See Exhibit

KK ("Robbed! How the Republicans CHEATED us out of ballot status in Illinois") (2131-40), which we hereby verify to be a true and correct copy. The prohibition of the BCRA on receipt of soft money would thus severely hamper the LNC's activities in this regard.

National Office Building

38. The RNC and DNC used soft money to purchase national office buildings. The LNC likewise intends to purchase or build a national office building, but would be forbidden by the BCRA to use soft money to do so, thus severely hampering its ability to secure a national office building.

Contributions for Non-Federal Campaigns

[17 (9 PCS/MC 906)]

39. The LNC presently receives and uses soft money contributions for use on non-federal campaigns, but would be forbidden to do so under BCRA. *See* Exhibit II ("Campaign Update: Help us run more TV ads for you local candidates!") (2117-22). As a consequence, the ability of the LNC to assist in such campaigns would be seriously compromised, thus compromising the ability of state and local Libertarian Party candidates to launch effective campaigns.

Accounting/Database Costs

40. The requirements of the BCRA would require the LNC to modify, at considerable expense, its existing membership database. For the example, current software focuses on whose membership in the party or *Libertarian Party News* subscription is being extended. It does not track the person who made the contribution, in cases where one person made the contribution or subscriptions payment on benefit of another. The software must be modified to change this focus on who is a member of the party, not who contributed money for membership. New software would have to be developed to change this focus. Considerably more staff time would have to be devoted to the new tasks

that the BCRA would create in administration of the new program. Any such software would have to be custom written, at great cost, in order to comply with FECA requirements. Because there are only a handful of national party committees, of which the LNC is one, software for such national committees is not commercially available "off-the-shelf."

Effect on Libertarian Party Infrastructure

41. As noted above, the LNC has very few compensated employees, and the state Libertarian Parties, taken as a whole, have even fewer compensated employees. As a consequence, a large percentage (very likely much larger than with the Republican or [18 (9 PCS/MC 907)] Democratic Parties) of the Libertarian Party's infrastructure (e.g., "professional" party personnel, administrative functions, ballot access petitioning expertise, and FECA compliance expertise) is operated by the LNC.

42. The LNC is the primary funder of last resort for ballot access drives, and is generally regarded as responsible to ensure the Libertarian Party presidential ticket gains ballot access nationwide. Because of prohibitive ballot access laws, many state Libertarian Parties do not have the resources to gain ballot access in their states, without assistance from the LNC. For example, North Carolina requires an enormous number (currently 58,842) valid signatures of registered voters to place the Libertarian Party on the ballot every four years (assuming the Party fails to retain ballot status by polling 10% of the vote). Every four years, the LNC routinely funds a portion of the North Carolina Libertarian Party's ballot access drive, as the North Carolina Libertarian Party is unable to handle it alone. Further burdening the resources of the LNC will materially and adversely affect the ability of many state Libertarian Parties to obtain and retain ballot access for both their federal and non-federal candidates.

43. The LNC is a primary recruiter of contributors and members of state Libertarian Parties. It has significantly more

expertise in direct mail fundraising, and the economies of scale to engage in direct mail fundraising nationally. In addition to sharing the proceeds of membership dues raised via that direct mail fundraising with 45 state Libertarian Party affiliates as part of the LNC's unified membership program, the LNC shares with all state Libertarian Party affiliates the names and contact information derived from its direct mail and other activities. Further burdening the resources of the LNC will materially and adversely affect its ability to assist state Libertarian Parties in this way, and membership it will greatly impede recruitment by the state Libertarian Parties. [19 (9 PCS/MC 908)]

44. As noted above, only a handful of state Libertarian Parties are registered as political committees with the FEC. Hence, virtually all of the FECA compliance expertise of the Libertarian Party is concentrated in a few employees or contractors of the LNC. Under the BCRA many more state Libertarian Parties will be required to file as political committees with the FEC, though none of them have the expertise to deal with the FECA or BCRA. The net effect of this is that they will look to the LNC to provide that expertise, thus diverting LNC resources from issue advocacy and candidate support, to providing FECA and BCRA consulting services.

Prohibition of Contributions by Minors

45. The national Libertarian Party presently has many, but an indeterminate number of, minor members. *See* Exhibit A, which we hereby verify is a true and correct copy of "Combined Current Member Analysis" (1938). Dues must be paid as a condition for membership in the national Libertarian Party. However, minors are forbidden by the BCRA to contribute their membership dues as "hard money" to the LNC; persons are forbidden to contribute their dues as "soft money" to the LNC; any dues contributed as "soft money" to state-affiliated parties cannot be transferred to the LNC under the BCRA. As a consequence, the

BCRA effectively forbids minors from being members of the national Libertarian Party. This would force the LNC to discriminate on the basis of age, which is completely contrary to libertarian beliefs and principles.

46. Because many of the Libertarian Party's state affiliate party committees have a unified membership structure that requires state members to also contribute to the LNC and become national Libertarian Party members, and because only a state or national member may be elected as a Libertarian Party National Convention Delegate, the BCRA would effectively [20 (9 PCS/MC 909)] prohibit minors from serving as Convention Delegates, though many have done so in the past. For example, at the 1993 Libertarian National Convention, Natalie Lloyd, an Ohio delegate who was then a minor, attended and ran for national chair of the Libertarian Party, receiving many, though not a majority, of votes. Trevor Southerland, a Georgia delegate who is a minor, attended the 2002 Libertarian National Convention, and participated by voting on changes to the Libertarian Party's national platform and bylaws.

47. Because the LNC does not receive federal funding for its national conventions like the Republican and Democratic Parties, it must charge attendees for the cost of their participation. In the past, many minors have attended Libertarian Party national conventions and have paid the LNC to do so. As a consequence, BCRA effectively forbids minors from attending Libertarian Party national conventions, because minors are prohibited from contributing funds to the LNC to defray the costs of their participation at the conventions.

48. Some state party affiliates require state party members to be members of the national party in order to participate as officers or board members in the state or local party. Thus, BCRA's effective prohibition on minors being members of the

national Libertarian Party precludes their participation in these state or local parties as offices or board members.

49. The rationales that support the BCRA's ban on minors' contributions have no application to the Libertarian Party. There are no known cases in which minors have been used as conduits to enable others to exceed limits on contributions made to the LNC. None of LNC's large contributors are minors. [21 (9 PCS/MC 910)]

VERIFICATION OF DECLARATION

I verify that the paragraphs I testify to in the foregoing Declaration of Stephen L. Dasbach, Ronald Crickenberger, and Dominick Dunbar of the National Libertarian Committee in *McConnell, et al. v. FEC, et al.*, Case No. 02-0582 (CKK, KLH, RJL) (consolidated action) is true and correct.
Executed this 2nd Day of October, 2002

/s/ Stephen L. Dasbach
Stephen L. Dasbach
Senior Advisor
Former Executive Director (1998-2002)
Former National Chairman (1993-1998)
Libertarian National Committee

[22 (9 PCS/MC 911)]

VERIFICATION OF DECLARATION

I verify that the paragraph I testify to in the foregoing Declaration of Stephen L. Dasbach, Ronald Crickenberger, and Dominick Dunbar of the National Libertarian Committee in McConnell, et al. v. FEC, et al., Case No. 02-0582 (CKK, KLH, RJL) (consolidated action) is true and correct.
Executed this 2nd day of October, 2002

/s/ Ronald Crickenberger
Ronald Crickenberger

Political Director
Libertarian National Committee

[23 (9PCS/MC 912)]

VERIFICATION OF DECLARATION

I verify that the paragraphs I testify to in the foregoing Declaration of Stephen L. Dasbach, Ronald Crickenberger, and Dominick Dunbar of the National Libertarian Committee in *McConnell, et al. v. FEC, et al.*, Case No. 02-0582 (CKK, KLH, RJL) (consolidated action) is true and correct.

Executed this 2nd Day of October, 2002

/s/ Domick Dunbar
Dominick Dunbar
Operations Director
Libertarian National Committee

DECLARATION OF ROBERT MICHAEL DUNCAN

I, Robert Michael Duncan, hereby swear and depose as follows, based on my own personal knowledge:

1. I am a Member of the Republican National Committee ("RNC") from the State of Kentucky. At the time the RNC's Complaint in this case was filed, I served as Treasurer of the RNC, but as of July 2002 have become its General Counsel. I submit this Declaration to discuss: (a) my personal involvement in Republican Party activities at the local, state, regional, and national levels; and (b) my understanding of the likely impact of the Bipartisan Campaign Reform Act ("BCRA") on my personal political activities, the RNC, and the Republican Party of Kentucky.

[*2] **Education and Political Background**

2. I am a 1971 graduate of Cumberland College and a 1974 graduate of the University of Kentucky College of Law. I have also attended executive education programs at Harvard University, the University of Wisconsin, and the University of Kentucky. My full educational background is provided in my biographical statement, which is RNC Exhibit 2250, attached as Attachment 1 hereto.

3. I have an extensive background in Republican Party politics at the local, state, and regional levels, spanning the last thirty years. A comprehensive listing of my positions with local, state, and regional Republican Party organizations is included in my biographical statement. By way of illustration, my background includes the following:

(a) At the local level, I was Chairman of the Martin County (Kentucky) Republican Party from 1976-80. At various times I have also served as precinct chairman of the Upper Inez Precinct.

(b) At the state level, I was Chairman of the Republican Party of Kentucky in 1995. For various periods since 1971, I have also been a member of the State Central Committee and the Executive Committee. I was Finance Chairman in 1992, and I have been Chairman of the Budget Committee since 1996. I was a Delegate from the State of Kentucky at the Republican National Conventions held in 1972, 1976, 1992, 1996, and 2000. Shortly after my graduation from law school, from 1975-76, I also was Chairman of the Kentucky Young Republicans Federation.

(c) At the regional level, I was Chairman of the Region III College Republicans National Association from 1971-72. In 2000, I was Chairman of the Southern [*3] Republican Leadership Conference. I have also served as Vice-Chairman of the Southern Region of the RNC.

4. I also have substantial Republican Party experience at the national level, particularly through my positions with the RNC. By way of explanation, the RNC is composed of 165 voting Members, including: (a) the state and territorial Chairman or Chairwoman from each of the 50 states, the District of Columbia, and the four Territories of the United States (Guam, the U.S. Virgin Islands, Puerto Rico, and American Samoa); and (b) a National Committeeman and Committeewoman from each of these 55 entities. RNC membership is explained in detail in the Rules of the Republican Party, which were most recently adopted at the 2000 Republican National Convention on July 31, 2000. These Rules are RNC Exhibit 1, and are attached as Attachment 2 hereto.

5. I have been a Member of the RNC since 1992, when I became the National Committeeman from the State of Kentucky. As noted above, I am also General Counsel of the RNC, an office I assumed in July 2002. I previously was Treasurer of the RNC, an office I held from January 2001 to July 2002. I am, concurrently, a member of the RNC's

Executive and Rules Committees. Over the past decade, I have served on the RNC Chairman's Executive Council and the RNC Committee on Arrangements, and as Chairman of the RNC Committee on Contests. Further, I have held several positions on the committees responsible for various aspects of the Republican National Conventions held in 1972, 1976, 1992, 1996, and 2000. A full list of my RNC positions is provided in my biographical statement.

6. Like most of the RNC's Members, I have worked my way up through the ranks from the local and state levels to the national level of the Republican Party. I still remain involved in party activities at the local and state levels. Most significantly, I regularly participate [*4] in fundraising activity for the Republican Party of Kentucky and candidates for statewide elected office.

a. I was a Silver Sponsor of a fundraising reception held on August 27, 2002, to support the re-election of Kentucky State Senator Julie Rose Denton. In addition to State Senator Denton, the featured guest at this reception was United States Congressman Ernie Fletcher. The invitation to this event, showing my participation, is RNC Exhibit 235, attached hereto as Attachment 3.

b. I was a Host, in my capacities as RNC National Committeeman from Kentucky and Treasurer of the RNC, of a fundraising dinner held on July 29, 2002, to support Kentucky Victory 2002 and the Republican Party of Kentucky. The dinner honored United States Senator Mitch McConnell and Congresswomar Anne Northrup, with a special appearance by former New York City Mayor Rudolph Giuliani. A full 80% of the proceeds from this dinner went to the Republican Party of Kentucky for its use in various local, state, and federal Victory programs. The invitation to this event, showing my participation, is RNC Exhibit 233, attached hereto as Attachment 4.

c. I was also a Host, in my capacity as RNC National Committeeman from Kentucky, of a fundraising dinner held on June 16, 2000, to support Kentucky Victory 2000 and the Republican Party of Kentucky. The dinner was in honor of then-Governor George W. Bush. All of the proceeds from the dinner went to the Republican Party of Kentucky for use in its various local, state, and federal Victory programs. The invitation to this event, showing my participation, is RNC Exhibit 859, attached hereto as Attachment 5.

d. I was on the Dinner Committee of a fundraising event held on July 24, 1996, to support Victory '96 and the Republican Party of Kentucky. The dinner was in honor **[*5]** of former President George Bush. All of the proceeds from the dinner went to the Republican Party of Kentucky for use in its various local, state, and federal Victory programs. The invitation to this event, showing my participation, is RNC Exhibit 1617, attached hereto as Attachment 6.

e. I was also on the Dinner Committee of a fundraising event held on October 13, 1995, to support the Republican Party of Kentucky. The event was a salute to former President George Bush. All of the proceeds from this event went to the Republican Party of Kentucky. The invitation to this event, showing my participation, is RNC Exhibit 1734, attached hereto as Attachment 7.

7. In my experience at all levels of Republican Party activity, it is very important for the local, state, and national arms of the RNC to work closely together in all aspects of the political process. Coordinated efforts among the party's branches produces the best results and prevents duplication of effort and inadvertent conflicts among efforts. The involvement of high-ranking RNC officials in local and state-level party activities is vital as well. As a National Committeeman, and as General Counsel and formerly

Treasurer of the RNC, for example, I have substantial and continuous responsibilities within the RNC, but I also remain active in Kentucky state and local politics.

a. In addition to the fundraising activities described above, at the state level I have also provided general campaign assistance and advice to Kentucky gubernatorial candidates Louie Nunn in 1979, Robert Gable in 1975, and Larry Hopkins in 1991.

b. At the federal level, I was Chairman of Bush for President, Central States, from 1999-2000. I was also Chairman of Bunning for Senate in 1998, Chairman of Kentucky Bankers for Bush in 1988 and 1992, Chairman of the Seventh Congressional District for Reagan in 1980 and 1984, and Chairman of Young Kentuckians for Nixon-Nunn in 1972.

[*6] A more complete list of my campaign activities at all levels is included in my biographical statement.

Impact of the BCRA

8. The BCRA, among other provisions, will prohibit political parties or their "agents" from soliciting, raising, spending, or contributing funds that do not fit within the requirements of the Federal Election Campaign Act. This aspect of the BCRA will directly impact my personal political activities and the activities of the RNC and the Republican Party of Kentucky.

9. As described above in paragraph 6, I am substantially involved in fundraising activities on behalf of the Republican Party of Kentucky and candidates for state office in Kentucky. I engage in these activities both in my personal capacity and in my official capacity as RNC National Committeeman from the State of Kentucky. The funds I help raise on behalf of the Republican Party of Kentucky and

candidates for state office in Kentucky are, to a large extent, regulated by state rather than federal law. For this reason, the BCRA may directly restrict my personal political and fundraising activity because it may be a crime for me to assist the Republican Party of Kentucky or state and local candidates in raising non-federally regulated money. Indeed, even if my status as an officer or "agent" of the Republican Party is not clearly resolved by the BCRA implementing regulations, I may well refrain from participating in state-level fundraising activity to prevent the possibility of an enforcement action intended to prompt clarification of the BCRA by a federal court or the FEC.

10. The BCRA will adversely affect the Republican Party of Kentucky. The State of Kentucky is predominantly Democratic, with 60% of voters registered as Democrats and 33% registered as Republicans. Kentucky's current Governor, Paul Patton, is a Democrat, and [*7] was first elected Governor in 1995. The state has not had a Republican Governor since Louie Nunn left office in 1971. Although the State Senate is almost evenly split between Democrats and Republicans, Democrats have a nearly 2-1 margin over Republicans in the State House of Representatives, where Democrats occupy 66 seats and Republicans occupy only 34 seats. Because Democrats comprise the vast majority of registered voters and state-level elected officials, the Republican Party of Kentucky in the past has had difficulty in raising sufficient funds and active members to maintain its necessary operations. Senator McConnell has been instrumental in building the state party through his heavy involvement in organizational and fundraising activities. Because he is a federal officeholder, the BCRA will prohibit or severely restrict Senator McConnell's participation in these activities.

11. The Republican Party of Kentucky relies on financial assistance from the RNC and other national Republican Party committees. For example, the Republican

Party of Kentucky in 2000 had total revenues of approximately $7.35 million. Of this total, roughly $4.5 million -- around 60% -- consisted of transfers from the RNC's Republican National State Elections Committee ("RNSEC"), the National Republican Senatorial Committee, and the National Republican Congressional Committee. More significantly, in 2000 the Republican Party of Kentucky had total non-federal revenues of approximately $4.1 million, of which roughly $3.98 million -- over 90% -- consisted of transfers from these same national party committees. And, as shown above, much of the money raised by the Republican Party of Kentucky was raised in ways that will be prohibited by the BCRA, particularly those funds raised with the assistance of the RNC or federal officeholders or candidates.

12. Obviously, the BCRA's prohibitions on the expenditure or raising of non-federal money by national political party committees will have a serious financial impact on the [*8] Republican Party of Kentucky. The activities most likely to suffer directly from this loss of funding are "get out the vote" efforts, generic party-building activities, and sponsorship of issue advertisements, which are mostly supported by the transfers of non-federal money from the national party committees. The Republican Party of Kentucky will also suffer as a result of the BCRA's prohibition on federal officeholder involvement in state-level fundraising activity. The success of state-level fundraising efforts in Kentucky often turns on precisely this soon-to-be-illegal activity and many federal officeholders, including Senator McConnell, participate in state party fundraising efforts that the BCRA would ban. Further, the RNC currently shares lists of fundraising prospects with the Republican Party of Kentucky, and this arrangement likely would be banned by the BCRA as well.

13. Beyond its impacts on my personal political activity and the Republican Party of Kentucky, the BCRA will also undermine the essential relationship between local, state,

and national arms of the RNC. For example, the BCRA will restrict joint fundraising activities between the RNC and state parties, but such activities are very important to state parties. The RNC has a very impressive and professional fundraising program which, when engaged in joint fundraising activity, greatly increases the amount of money raised by and on behalf of state parties. The BCRA's elimination of joint fundraising will have a severe impact on state parties because they simply cannot fill the void that will be left by the removal of the RNC from the process. My experience with the RNC and the Republican Party of Kentucky demonstrates to me that state parties generally: (a) are not able to attract full-time fundraising staff with experience equal to that of the RNC's fundraising employees; (b) have a lower profile than the RNC; and (c) thus have more difficulty raising funds, both in-state and out-of-state, than the **[*9]** RNC does even when it is raising funds specifically for use in connection with Kentucky state-level elections.

14. The BCRA will also prohibit the RNC from donating funds to the Republican Party of Kentucky that it ultimately uses to support state and local candidates for office. For example, just this year, RNC transfers of non-federal money allowed the Republican Party of Kentucky to provide $75,000 to support a Republican candidate for Mayor of the City of Lexington which, without the RNC's transfers, the state party would have had great difficulty providing. In 2000, the RNC provided the state party with $125,000 in connection with State Senate elections and $75,000 for a special Senate race in 2001.

15. Moreover, as a general matter, RNC transfers are particularly important in Kentucky, which holds statewide elections in odd-numbered years that do not coincide with the federal elections that occur in even-numbered years. The absence of federal elections that coincide with Kentucky's "off-year" elections causes them to attract less attention from voters, and thus diminishes the state party's ability to raise

funds for the purpose of supporting state-level candidates. Even though these "off-year" elections do not coincide with federal races, the BCRA would nonetheless prohibit the RNC's donation of non-federal money to the Republican Party of Kentucky and to state-level candidates in Kentucky.

16. The various RNC exhibits attached to this declaration are to the best of my knowledge true and correct copies of records kept by the RNC in the course of its regularly conducted business activities. The invitations to fundraising events are true and correct copies of documents in my personal possession.

[*10] I declare under penalty of perjury that the foregoing is true and correct.

s/
Robert Michael Duncan

October 3, 2002

[EXHIBITS OMITTED]

[caption omitted]

DECLARATION OF EMILY ECHOLS

I, Emily Echols, hereby declare under penalty of perjury of the State of Georgia:

1. I am a citizen of the United States and a resident of the State of Georgia.

2. I am a minor, 13 years of age, and was born on December 25, 1988.

3. Although I am not an adult, I understand that it is important to speak truthfully about the facts that I know, and admit honestly when I do not know something; I understand that not telling the truth in this statement would be a wrongful thing, and that I have the duty under the law to tell the truth.

4. Although I am not an adult, I understand the difference between facts and fantasy, and that my duty in making this statement is to testify to facts, and to avoid making up things that I cannot remember or do not know.

[end of page 1]

5. My parents are Tim and Windy Echols.

6. I am their oldest child, and I have six brothers and sisters.

7. We live in Commerce, Georgia.

8. I have attended Christian Schools, including Athens Christian, but this coming year I am returning to home-schooling. I will be starting into the ninth grade this year.

9. In addition to my studies at home and in Christian school about civics, government and history, I have learned about legislation and politics, by attending training programs sponsored by Teen Pact.

10. Teen Pact is an organization that my dad started to teach Christian students about the work of legislators and lawmakers, and about the basic operation of

the political process in our country and our states:

1. Teen Pact teaches kids about state legislation and political activities.

2. We listen to speakers, study materials, and have activities that allow us to look close up at legislative and political activities on the state level.

3. Also, we interviewed lobbyists at the legislature, and we heard from some legislators, and had the opportunity to ask them questions.

4. Participating in the Teen Pact programs has given me an understanding of how state legislatures work, including the process in the legislature and the outside activities of lobbyists and others who influence legislation.

5. I have become interested in government, politics and legislation, and the training at Teen Pact has increased my interest in these subjects, as well as my understanding.

[end of page 2]

6. In addition, I have gained experience in basic web page design and maintenance by designing the Teen Pact web site on the Internet.

7. I also learned about the process of writing legislation in Teen Pact, and had several opportunities to craft legislative proposals.

11. As a result of my learning about legislation, government and politics, I have been involved in helping certain candidates for election in their campaigns.

12. For example, I have worked on Mike Bailey's [interlinear correction: Beatty's] campaign. I worked at his headquarters making campaign signs, stamping and folding envelopes, and doing other needed work.

13. I have also worked at a polling place on election day to support candidates of my choosing.

14. The candidates that I have supported by volunteering, and by other activities, are ones that I have

chosen after careful thought and research.

15. I am a Christian.

16. By that, I mean that I have accepted the gift of salvation that comes through Jesus Christ and His death on the cross.

17. My family and I attend Grove Level Baptist Church.

18. As a Christian I would like to spread the faith inside the legislative process, and hope that the result of that will be to affect our country, change its direction, and hopefully, cause it to end legalized abortion.

19. I also believe, as a principal of my faith, that it is important for persons who are

[end of page 3]

followers of Christ to be involved in politics and in governing our Nation.

20. Because of my Christian faith, I will only support a candidate that is pro-life.

21. Also, I think that our government has gotten too big, and that too many people have gotten used to relying on it, so I can only support candidates that agree with me about reducing the size of government.

22. Becoming a state senator or representative one day is a goal that I have, but not for a very long time. Meanwhile, I enjoy going to the Capitol so that I can meet with the senators and representatives, and occasionally lobbying directed at a legislative aide.

23. As I understand the new campaign reform law, after November 5, 2002, until I reach my eighteenth birthday, I will not be allowed to give my money to candidates for elective federal office, including candidates for the Presidency, for the Senate and for the House.

24. In addition, as I understand it, after November 5, 2002, until I reach my eighteenth birthday, I will not be allowed to give money to any committees of political parties.

25. Being barred from supporting candidates who share my beliefs, opinions, and views, deprives me of the ability that I currently have to give money to such candidates, and takes away a means I have of expressing two different things: my support for the candidate, and my association with the candidate toward common goals.

26. As things stand now, when I attend a campaign rally or event, I am free to be able to donate money if a collection is being taken up for the candidate; but once the new law takes effect, I will lose that right.

27. Although I am young, I do have my own money, that is under my direction and control.

[end of page 4]

28. I earn money several different ways:

1. I do ironing for my family, and earn twenty-five cents per item of clothing;
2. I also earn money by cleaning houses.
3. I also earn money by setting up and operating a snack stand at different Teen Pact events;
4. I also earn money by teaching horse riding; I give lessons during the week, and in the summertime, I ran a week-long day camp for girls up to age 13.

29. The first thing I do with money I have earned is to pay my tithe to the church.

30. I also use the money I earn to pay for all expenses related to keeping and caring for my horse.

31. I also am able, from time to time, to deposit some money into my savings account.

32. Nevertheless, I usually have a small amount of cash on hand that I can use as I wish, and would be able to make a donation to a candidate that fits my requirements for office because of his beliefs and opinions.

33. My parents have encouraged me to save money, and also to give the tithe of my earnings to God, but

they have never forced me to spend my money in one way or another.

34. Because of my interest in government, legislation, and politics, and because of my Christian faith, I plan and intend to continue seeking out candidates for federal elective office who represent my views and beliefs on important questions like the right to life of children before birth, and on the size of our government, and other issues.

[end of page 5]

35. When I find such candidates, I plan and intend to make donations to them.

36. If I wanted to do so, I could spend it in many ways; but when the new law goes into effect, one way I will not be free to spend my own money is to support federal candidates with whom I agree.

[subscription and signature omitted]

[caption omitted]

DECLARATION OF TIM ECHOLS

I, Tim Echols, hereby declare under penalty of perjury of the State of Georgia:

1. I am a citizen of the United States and a resident of the State of Georgia.

2. I am above the age of 18, and I am competent to testify to the truth of the matters asserted in this Declaration.

3. I am married to Windy Echols.

4. We are the parents of seven children.

5. Our oldest child is a daughter, Emily Echols.

6. Emily is 13 years old.

7. She was born on December 24, 1988, in Georgia.

8. As a family we have provided for Emily's education through both private,

[end of page 1]

Christian schools and through home schooling, rather than by sending her out to a local public school.

9. In addition, we have arranged for her to receive education and training related to citizen participation in the government process by having her attend and participate in Teen Pact.

10. Teen Pact is a a non-profit ministry that I founded in 1993 after working several years with Campus Crusade for Christ.

11. We are members of Grove Level Baptist Church.

12. I have been ordained as a minister of the gospel.

13. As a ministry, Teen Pact has adopted a Statement of Faith, expressing our enduring understanding of the essential truths of our Christian faith. Our statement of faith acknowledges that we believe:

a. The Scriptures, both Old and New Testaments, to be the inspired Word of God, without error in the original writings, the complete revelation of His will for the salvation of men and the Divine and final authority for Christian faith and practice;

b. In one God, Creator of all things, infinitely perfect and eternally existing in three persons—Father, Son, and Holy Spirit;

c. That Jesus Christ is true God and true man, having been conceived of the Holy Spirit and born of a virgin, Mary. He died on the cross as a sacrifice for our sins according to the Scriptures. Furthermore, He arose bodily from the dead, ascended into heaven, and now sits at the right hand of God the Father. He is now our High Priest and Advocate;

d. That the ministry of the Holy Spirit which glorifies Jesus Christ, by

[end of page 2]

convicting of sin, regenerating the believing sinner, indwelling, guiding, instructing and empowering the believer for Godly living and service;

e. That man was created in the image of God but fell into sin and is therefore lost and only through regeneration by the Holy Spirit can salvation and spiritual life be obtained;

f. That the shed blood of Jesus Christ and His resurrection provide the only ground for justification and salvation for all who believe, and only those who receive Jesus Christ are born of the Holy Spirit, and thus become children of God;

g. That water baptism and the Lord's supper are ordinances to be observed by the Church during this present age. They are, however, not to be regarded as means of salvation;

h. That the true Church is composed of all such persons who through saving faith in Jesus Christ have been regenerated by the Holy Spirit and are united together in the body of Christ of which He is the Head;

i. In the personal and second coming of our Lord Jesus Christ; and,

j. In the bodily resurrection of the dead, of the believer to everlasting blessedness and joy with the Lord, of the unbeliever to judgment and everlasting conscious punishment.

14. Teen Pact is a nonprofit organization that provides instruction on the legislative and political process; it accomplishes its educational purposes by hosting young people in their state capitals for a four day period of intensive training and activities:

a. At TeenPact our major objective is to break down the intimidation that many have about involvement in our civil government. Surprisingly to some, public servants are

[end of page 3]

available and desirous to meet citizens - regardless of age - who live within their district. We want students to see that the future of our country is dependent upon their involvement.

b. One of the ways that we pursue this objective is by making the unfamiliar and challenging less threatening and manageable. We have found that you cannot go into a Legislature anywhere in the country and not be inundated with paper: bills, amendments, disclosures, rosters, code sections, committee reports. Even for adults, they all seem so confusing at first. By exposing them to these documents and explaining the role they serve in the process of law-making, Teen Pact students leave the Capitol with a better idea of the importance of each document and how they can use them as citizens for the rest of their lives.

c. Another approach we use in Teen Pact is to help our students learn the basics of parliamentary procedure and debate. We explain procedure and debate, and more importantly, we provide our students the fun and educational opportunity to put their learning into practice. Students write their own bills and work to see them passed

by the TeenPact Legislature during the week that they spend participating in the program.

d. Of course, working with a legislature requires knowing where it is, and where the offices of legislators are, and where committee and caucus rooms and hearing rooms are. So we also help our students learn their way around the State Capitol. Amazingly, just feeling comfortable with the surroundings and knowing your way around does a lot to help our students feel like this is their Capitol and a place they want to come back to.

e. Bearing in mind that we are a ministry, the week our students spend in their State capitols deliberately includes regular devotional times and Bible study. Students

[end of page 4]

begin each morning with music as they sing hymns and familiar choruses. TeenPact Student Staff lead their peers through a devotional on great political leaders found throughout to Bible.

f. During the State Capitol session, our TeenPact students have the opportunity to hear presentations by important and influential people in their state, and also to interact with them personally. Many of these political leaders enjoy spending time with our students and often share candid insights that inspire students to aspire for positions of leadership. One of the goals of our ministry is that every student will meet and encourage their legislators.

15. As a result of her participation in Teen Pact's activities, Emily understands parliamentary procedure and the election process.

16. In addition to Teen Pact, our home schooling program has provided Emily with information about the government and its operation.

17. As a family, we consider citizen involvement in government, legislative processes and politics to be an important duty.

18. As a family we have assisted with campaign

activities of candidates whose positions on important issues is consistent with our understanding of sound, Biblically based morality and governance.

19. Emily is very interested in politics, to the extent of volunteering to support campaigns of candidates.

20. I am aware that legal limits on the amount of money that I can give to a candidate for federal office have been enacted by Congress.

21. I am also aware that federal law prohibits me from giving money to a candidate

[end of page 5]

for federal office in the name of another, even in the name of one of my children.

22. I have never used my daughter's name, or any other person's, in making a political donation, in order to avoid limits that the law places on my ability to support candidates of whom I approve.

23. Emily is a bright and engaging young lady, and also quite responsible and entrepreneurial; she has demonstrated her responsibility and entrepreneurial inclination by starting a business offering horse riding lessons, and a week long summer day camp focused on horse riding instruction.

24. Emily's business has produced an income for her, and she has funds from that business that she has placed in a savings account, and some funds that she keeps on hand to use for various things.

25. Emily controls the money she has earned, paying her tithes to the Lord, using some proceeds for the feeding and care of her horse and mule, and depositing some into savings.

26. Emily is quite responsible. She began her business to afford the expenses related to having a horse. She has used monies she earned in the business to care for her horse.

[subscription and signature omitted]

[3 PCS CDP 382]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, *et al*. Defendants.	Civil Action No.: 02-CV-0582 (CKK, KLH, RJL)
CALIFORNIA DEMOCRATIC PARTY, *et al*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, *et al*. Defendants.	Civil Action No.: 02-CV-0875 (CKK, KLH, RJL) CONSOLIDATED ACTIONS

AFFIDAVIT OF RYAN ERWIN

I, RYAN ERWIN, swear and depose as follows, upon personal knowledge:

1. I am the Chief Operating Officer of the California Republican Party ("CRP" or "Party"). This is the highest staff-level position in the Party. As Chief Operating Officer, I am the chief administrative officer and I run the day-to-day operations of the Party under the supervision of the Operations Committee of the CRP's Board of Directors. I have served as Chief Operating Officer since 2001. I was previously Executive Director of the Nevada Republican Party, serving in that capacity from 1999 to 2001. I am familiar with the Party's income and expenditures, and the process of reporting required

under both California law and Federal law. I am familiar with its past activities and expenditures by review of its files and from discussions with staff and other persons knowledgeable about these matters. I have a basic understanding of the CRP, its relations with the Republican National Committee and the national party organizations, and its relations with Republican County Central Committees ("subordinate party committees"), its Victory Program, and its fundraising programs and projects, from my Nevada as well as my more recent California experiences. I am also familiar with the Party's voter registration programs, its Get-Out-The-Vote (GOTV) activities, its generic party-building activities, and its public communications (including its mail programs).

I am the custodian of the records of the documents that have been produced in discovery to defendants in this case and disclosed by the CRP on September 6, 2002, as amended on September 12, 2002 pursuant to the Court's scheduling and discovery order, identified as Exhibits 1-8, pursuant to the court's discovery Order. I have been informed by counsel that these documents may be used at trial. They are true and correct copies of documents that are created and maintained in the ordinary course of the CRP's business operations or are documents [3 PCS CDP 384] that have been produced in connection with the prosecution of this litigation by CRP.

2. CRP's Administrative Organizational Structure:

CRP has a core staff of 12 people during non-election years. Those employees are divided into, a Political Department, a Communications department, and a finance department. Administered by a Chief Operating Officer. This number increases substantially during even-numbered election years, to approximately 25 full-time persons. The Party maintains offices in two locations: Sacramento and Burbank, in the Los Angeles area. The cost of maintaining the offices and staff is substantial. Such cost includes not only staff wages and salary, but also related expenses such as health benefits,

workers compensation and disability insurance. Overhead includes among other things, rent, utilities, insurance, and legal fees.

3. CRP's Core Political Functions:

In addition to ongoing CRP's overhead and administrative costs, CRP makes expenditures for a range of activities in furtherance of its ideological principles and goals. In general, CRP supports the Republican Party's candidates at the national, State and local level. CRP actively supports or opposes ballot measures at the State or local level that reflect the Party's ideology. CRP provides training and support of grass roots organization and mobilization activities of fifty-eight county Republican Central Committee organizations. CRP engages in extensive voter registration activities, GOTV activities, and generic party-building activities and communications. CRP recruits and trains candidates for local, state and federal elective offices. CRP conducts bi-annual convention meetings to mobilize Party activists at the state level and conducts a variety of workshops, training sessions and informational meetings on a regional basis, in cooperation with its County Republican Central Committees. CRP provides communications, services and activities for our membership (such as party literature, press [3 PCS CDP 385] releases, and talking points distributed to Party activists throughout California on issues to support grass roots letter writing campaigns). The most significant part of CRP's activities, both in terms of time and money, is its support of State and local candidates, and activities such as voter registration and GOTV, that are essential to the election of those candidates.

4. CRP's Conduct of Victory (Coordinated) Campaigns:

CRP conducts a coordinated campaign, which has been designated as its Victory Campaign in each election cycle since 1980 (e.g., Victory 2000.) This campaign model has been used in Presidential election cycles and non-Presidential election

cycles where the "top of the ticket" is its Gubernatorial candidate.

The coordinated campaign is first formulated in the off-election year, prior to the nomination of any Gubernatorial or Presidential nominee. The CRP's Victory coordinated campaign plan is developed by the CRP's Chief Operating Officer and Political Director, in conjunction with representatives of State Legislative campaign leaders who serve on the CRP's Board of Directors. When the CRP has had an incumbent Governor at the top of the ticket or top of the organization, such as [3 PCS CDP 396] from 1982 through 1998, the incumbent Governor or his representative would be involved integrally in the development of the Victory Plan. Similarly, CRP's Chief Operating Officer and Political Director discuss the proposed Victory Plan and coordinate informally with the Republican National Committee's Regional Representative and with the appropriate representatives of the National Republican Senatorial Committee ("NRSC") and the National Republican Congressional Committee ("NRCC"). CRP facilitates this coordination and communication, not only to ensure that RNC, or NRSC and NRCC, at the national level can assess the California situation for purposes of its coordinated national campaign strategy but also to lay a foundation for RNC support for specific programs, such as voter registration, voter identification, and other top-of-the-ticket assistance. The coordinated Victory Plan is implemented after the nomination of a Gubernatorial candidate or Presidential nominee at the Republican National Convention, with full involvement of the CRP political staff, the State Legislative leadership, members of the Republican Congressional delegation from California, and representatives of the top-of-the-ticket campaigns.

The CRP's Victory Program is an umbrella under which volunteers are recruited to the CRP's election GOTV program utilizing the obvious attraction of the leadership and full-coordination of the entire program with the Republican "top-of-the-ticket" candidates, such as the Republican Gubernatorial or

Presidential nominees.

5. <u>CRP's Support for Candidates at the Local, State and National Levels</u>:

CRP recruits, trains and assists persons to seek elective offices at the local, state and national levels. Under California law, local offices are non-partisan. (Article II, Section 3.5, California Constitution; California Elections Code § 8002.) CRP has currently identified over 5,000 local officeholders (members of City Councils, County Boards of Supervisors, school, water, utility, fire and other local districts) who are registered Republicans. Although such offices are not "partisan," CRP views such officeholders as part of the "bench" of potential candidates for future partisan elective offices, and CRP occasionally formally endorses candidates for such non-partisan offices and seeks to encourage and promote capable candidates to seek partisan elective offices.

For example, CRP spent nearly $500,000 in the 2001 City of Los Angeles mayoral primary election in an effort to elect Republican Steve Soboroff as Mayor of Los Angeles, and smaller amounts to elect several members of the City Council and City Controller. (See Exhibit *5,* Items B 1-B 8, incorporated by this reference herein.) In 2002, CRP spent nearly $15,000 in [3 PCS CDP 387] the 2002 City of Long Beach mayoral primary and runoff elections in an effort to elect Republican Norm Ryan as Mayor of Long Beach (See Exhibit *5,* Items Al - A2 , incorporated by this reference herein.)

A number of Republican County Central Committees, including the San Diego County Republican Central Committee, also actively support the election of candidates for local elective offices. In 2001, the San Diego County Republican Central Committee actively supported the election of Dick Murphy as Mayor of the City of San Diego, and in 2002 is supporting nearly one hundred candidates for local elective offices.

The State of California nominates candidates for

partisan elective offices (including State Constitutional and legislative offices, State Board of Equalization, U.S. Senate, and U.S. House of Representatives by the direct primary election process. (California Elections Code § 337.) California's partisan primary election is a "partially closed primary." (California Elections Code §§ 13102(a), (b); see also, *California Democratic Party, California Republican Party, et a!. v. Jones,* 530 U.S. 567 (2000) [Complaint, ¶ 5].)

CRP does not participate in "contested" partisan primary elections that nominate Republican candidates for such partisan elective offices. (Bylaws, Article III, Sections 3.02; but see *Eu v. San Francisco County Democratic Central Committee, et al.*, 489 U.S. 214 (1989).) However, CRP may support candidates in uncontested primary elections for partisan elective offices, and occasionally does so. CRP generally supports all Republican nominees for such offices at general elections.

CRP's principal focus is to elect its nominees to State Constitutional offices, (including Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Controller, insurance Commissioner), and for State Legislature (forty State Senators, eighty State Assembly [3 PCS CDP 388] members.)

CRP spends substantial amounts in direct support of candidates for state legislative offices. CRP supports the election of challenger candidates for State Senate and State Assembly each election cycle. Typically, CRP will support from five to fifteen challenger candidates seeking election to "open seats" (in which no incumbent seeks re-election) or in seats held by Democrat incumbents during each election cycle. CRP also supports its incumbent candidates who face challenges in marginal or competitive districts. CRP supports such candidates by direct monetary contributions to their campaigns, but more importantly by mailing of endorsement mail pieces directly to registered Republican voters and often to identified potential supporters who are independent or registered as declining to state a partisan affiliation. CRP also includes such candidates

on "slate lists" sent to Republican voter households as part of its GOTV efforts. CRP spent approximately $2 million on such direct candidate support of state legislative candidates in the 1999-2000 election cycle, and similar amounts in the 1997-1998 and the 1995-1996 election cycles. CRP may send approximately five to twenty mailings on behalf of each candidate for office to voters during the election. The cost per mailing may range from $10,000 to $30,000 per mailing.

Support of candidates for such offices is the primary role of the CRP, because these officials and their appointive members directly comprise approximately forty-five (45%) percent of the membership of the CRP's state central committee. Moreover, CRP seeks to elect Republicans to the Governorship and State Legislative offices, because Republican state elected officials support and promote policies favored by the Republican electorate and also because the Governor and State Legislature decide the decennial redistricting of state and federal offices.

Exhibit 5, Items C1-C6, incorporated by reference herein contains a partial set of mailings on behalf of [3 PCS CDP 389] Republican candidates/nominees for State Legislative offices.

Under current California law, enacted by California voters as Proposition 34 in 2000, candidates for state elective offices are subject to contribution limits on contributions from contributors of $3,000 per election for candidates for State Legislative offices, $5,000 for candidates for State Constitutional offices other than Governor, and $20,000 per election for candidates for Governor. (California Government Code ° 85301.) The latter two limits are not in effect for the November 2000 elections, but will apply to subsequent elections for such offices. Candidates for such offices also are subject to voluntary expenditure limits. (California Government Code § 85400 et seq.)

However, CRP and local Republican County Central Committees may accept contributions of up to $25,000 per contributor per calendar year for the purpose of making

unlimited direct contributions to such candidates (California Government Code § 85303(b)), and for sending "member communications" to registered Republican voters that endorse candidates for state elective offices (California Government Code §§ 85303(b), 85312) and for "issue advocacy" communications that do not "expressly advocate" the election of such candidates but that are coordinated with those candidates (California Government Code § 85310). These expenditures do not count against these candidates' voluntary expenditure ceilings. (California Government Code ° 85400(c).) Thus, under Proposition 34, CRP and Republican County Central Committees can play, and currently are playing, a more significant role in the support of Republican nominees for State Constitutional and State Legislative offices than other participants in the election process for such candidates.

Proposition 34 also permits CRP and local Republican County Central Committees to accept unlimited contributions for administration, overhead, voter registration, get-out-the-vote, [3 PCS CDP 390] voter identification, and independent expenditure activities as well as "issue advocacy" communications not coordinated with candidates for elective state offices, and finally, for activity in support of candidates for local elective offices. (California Government Code § 85303(c).)

Political parties will play an even more significant part in the future when the contribution limits for candidates for State Constitutional offices are fully effective.

CRP also supports candidates for federal office, including its nominees for U.S. Senate and U.S. House of Representatives. CRP has no candidates for U.S. Senate at the November 2002 election, and had one candidate for U.S. Senate on the 1998 ballot and one on the 2000 ballot. CRP supports the election of challenger candidates for such offices each election cycle. Because the 1980 redistricting and the 2000 redistricting of Congressional districts resulted in few marginal or "competitive" districts, typically, CRP has supported no more

than one or two challenger candidates seeking election to "open seats" (in which no incumbent seeks re-election) or in seats held by Democrat incumbents during each election cycle.

CRP also supports its incumbent Congressional officeholders who face challenges in marginal or competitive districts. CRP supports both challenger and incumbent candidates by direct monetary contributions to their campaigns, which are limited to $5,000 per election. CRP also provides "coordinated expenditures" in support of such candidates on occasion. (2 USCA § 441a(d)(3); see also *Colorado Republican Federal Committee v. Federal Election Commission* ("Colorado 11") 533 U.S. 431(2001).) CRP provided "coordinated expenditure" support or "volunteer party mail" on behalf of incumbent Congressmen Brian Bilbray, Steve Kuykendall, and Steve Horn, and in support of challenger candidates Rick Rodriguez and Jim Cuneen, in 2000. CRP provided "coordinated expenditure" support of Matt Fong, CRP's nominee for U.S. [3 PCS CDP 391] Senate in the 1998 election in the amount of S 2,189,000, which included the amount of delegated support by the Republican National Committee. (2 USCA ° 441a(d)(3); 11 CFR § 109.2(d).)

CRP also provides "volunteer party mail," mail produced, sorted, and stamped by party volunteers. (2 USCA 43 l(B)(9) (viii).) Such volunteer party mail endorsing Republican nominees or opposing their Democrat opponents is sent directly to registered Republican voters and often to identified potential supporters who are independent or registered as declining to state a partisan affiliation.

CRP budgeted and spent approximately $ 1,400,000 on federal "coordinated expenditure" mailings or broadcast advertising and "volunteer party mailings" in the 1999-2000 election cycle; approximately $ 650,000, in the 1997-1998 election cycle.

CRP also may participate in "independent expenditures" on behalf of its candidates for federal offices (*Colorado Republican Federal Campaign Committee v. Federal Election*

Commission ("Colorado 1") 518 U.S. 604 (1996.) While CRP may do so under Colorado I, to date CRP has not actually engaged in such independent expenditures on behalf of Republican candidates. However, in each election since the Colorado I decision, CRP has considered this option in making decisions about the manner in which it will support such federal candidates, and believes the use of such independent expenditures may be appropriate in certain circumstances. It is my understanding that the chief reason in the past for not using "independent expenditures" has been the relative unavailability of federal dollars to do so.

CRP also includes such candidates on its "slate card listings" sent to Republican households as part of its GOTV efforts. Such mailings are considered "exempt activities" under F.E.C.A. (2USCA § 431(a)(B)(iv).) [3 PCS CDP 392]

6. CRP's Support of Issues Through "Issue Advocacy" Messages:

CRP has engaged in "issue advocacy" activity in order to educate Republicans and the public generally of its positions on a variety of issues. Many "issue ads" disseminated in the 1996 and 2000 election cycles identify candidates for federal offices. These messages are the best way to crystallize attention on issues and principles on which the Party stands, because the public does not read party platforms or consider issue positions in a vacuum. Candidates' positions on issues are cues to the Party's position on issues for the public, and helps not only to educate the public but to mobilize the public toward association with the Party.

CRP participated in national issue advocacy programs in 1996 and 2000 which featured Bob Dole and George W. Bush and presented their positions on issues such as education, taxes, national defense, and Social Security, with particular attention given to the Hispanic population in California. Through such activity, CRP reached out to the Hispanic community, in order to attract new adherents to the Republican

ideas and principles.

CRP in the 2002 election cycle for state and local elective offices is using "issue advocacy" messages also to focus public attention on the Party's position on issues such as energy policy, the budget, taxes, and education, and how the Republican positions and ideas contrast with those of the Democrat Party.

7. CRP's Support of Ballot Measures at the State and Local Levels:

California's Constitution provides for popular initiative and referendum at the State and local levels. (Art. II, Sections 8 and 10, Art. IV, Section 5, California Constitution.) California has been at the forefront of the popular initiative process, in which the People enact amendments to California's Constitution and statutes, and enact bond funding for revenue bonds for public capital improvements, and at the local level to County and City charters and general ordinances. [3 PCS CDP 393]

Proposition 13, the 1978 Howard Jarvis - Paul Gann property tax relief measure, is probably the best-known example of such popular legislating.

CRP endorses or opposes statewide ballot measures and occasionally local ballot measures during each election cycle. At its recent convention in September 2002, CRP's state central committee endorsed or opposed seven statewide measures on subjects as diverse as court consolidation, parks and school bond funding, afterschool program activities funding, and election day voter registration law changes, and one local measure in the County of Los Angeles on the subject of local bond funding. In 2000, CRP endorsed or opposed nearly a dozen statewide measures on subjects as diverse as juvenile crime, marriage, Indian gaming compacts, insurance reforms, bond measure approval requirements, school vouchers, campaign finance reform, and penalties for murder and car jackings.

CRP regularly includes ballot measure endorsements on

its slate mailings. Exhibits 3, Items A-F, incorporated by reference herein, includes sample CRP "slate card listings" of candidate and ballot measure endorsements during the 1995-1996, 1997-1998 and 1999-2000 election cycles.

California law does not limit the source or amount of such contributions, and such activity is protected under the federal constitution. (California Government Code ° 85303(c); see also Hardie v. Eu (1976) 18 Cal.3d 371; Citizens Against Rent Controlv. City of Berkeley, 454 U.S. 290 (1981); First National Bankof Boston v. Bellotti, 435 U.S. 765 (1979).) CRP's expenditures on behalf of such ballot measures typically are coordinated with the proponents or opponents of such measures, and thus constitute "non-monetary contributions" to the committees formed to support or oppose such measures. Such committees are typically non-profit, tax exempt organizations exempt under section 501(c)(4) of the Internal Revenue Code and [3 PCS CDP 394] corresponding state tax law. Section 323(d)(l)of the FECA, as enacted by section 101of BCRA, prohibits CRP and Republican County Central Committee organizations, from contributing to section 50 1(c) organizations such as these ballot measure committees, if these organizations engage in "federal election activity." It is my understanding that such organizations typically engage in such activity by urging California voters to vote at consolidated state partisan primary and general elections that are federal elections.

Thus, CRP and Republican County Central Committees engaging in such ballot measure endorsement activity would be prohibited from using funds explicitly permitted by California law and from spending funds effectively to support such ballot issues.

8. CRP's Training and Support of County Grass Roots and Mobilization Activities:

CRP as the state central committee is part of a pyramid of Republican volunteer and activist activity, with the Republican County Central Committees in fifty eight California

counties at the base of the pyramid. At the county level, the Central Committee organizations, volunteer Republican organizations such as the Republican Womens' Federation, and others, operate local headquarters at election time, make volunteer phone calls, walk precincts, and conduct much of the grass roots, on-the-ground operations to contact and mobilize Republican voters.

CRP has provided training of Republican County Central Committee members and party activists at its conventions, at special regional training sessions conducted in election and off- election years, and through a variety of manuals and guides. Exhibit 4, Items A - X, entitled "CRP County Support Program Materials," incorporated by reference herein, are samples of CRP-produced and distributed training manuals covering subjects such as organizing a headquarters operation, a telephone center, organizing a county fair booth to distribute generic [3 PCS CDP 395] party materials, campaign collateral materials such as buttons, bumper strips and yard signs, organizing a fundraising program, compliance with campaign laws including FECA and the California Political Reform Act and the like.

Neither the Republican County Central Committees nor the local Republican volunteer clubs or activist groups has the financial wherewithal or expertise available to prepare such materials or provide experienced volunteer trainers as does the CRP. I understand that the Republican National Committee also has provided assistance of a similar kind to Republican County Central Committee organizations on a nationwide basis.

9. CRP's Voter Registration Activities:

CRP for many election cycles has provided and paid for partisan voter registration, through its Operation Bounty program in which Republican County Central Committees, Republican volunteer organizations and Republican candidates for state and federal office may participate, and through supplementary paid voter registration drives. Most of these

participating groups and organizations are Internal Revenue Code section 527 organizations, transfers of CRP funds to which may be prohibited by section 323(d)(2) of FECA, as enacted by section 101 of BCRA.

CRP has registered over 350,000 Republican voters through such volunteer and paid voter registration programs in each election cycle except the 1997-1998 election cycle since 1983. (Exhibit 7, Chart 9, incorporated by reference herein, quantifies the results of these CRP voter registration programs.) In the 1995-1996 election cycle, CRP's Republican voter registration programs realized 367,935 Republican registrations, in 1997-1998, they realized 160,384 Republican registrations, in the 1999-2000 election cycle, 450,864 Republican registrations, and in the 2001-2002 election cycle, already they have realized over 300,000 [3 PCS CDP 396] Republican registrations. This voter registration activity exceeds the entire registered voter populations of some states.

Voter registration drives also provide opportunities to attract new registrants to participate in CRP and Republican County Central Committee activities and to solidify the voters' affiliation with the Republican Party and its candidates for elective state and federal offices.

The overwhelming amount of this activity is "generic" voter registration activity urging potential registrants to "Register Republican."

10. CRP's GOTV Activities:

CRP conducts extensive Get-Out-the-Vote activities to mobilize Republican voters through a variety of methods and materials, in coordination with Republican County Central Committee organizations, Republican volunteer clubs and candidates. Such GOTV activities are local in nature.

Exhibit 7, Chart 10, entitled "Get Out the Vote Activity by County by Election Cycle, 1993-2000," incorporated by this reference herein, is a summary of the CRP's GOTV activity that was coordinated with the Republican County Central

Committees during election cycles since 1993.

a. *GOTV Telephone Calls:* CRP provides financial assistance to Republican County Central Committees to establish local headquarters with telephone bank capability to make GOTV phone calls not only to mobilize volunteers to walk and phone on election day but also to make direct calls to voters to urge them to vote, as well as to offer assistance in getting to the polls if necessary. CRP also has established telephone centers that make calls on a regional and statewide basis for such purposes. [3 PCS CDP 397]

This GOTV phone call activity has been stable, rising somewhat over the years as telephoning has supplemented and to some extent supplanted door-to-door efforts due to demographics and the difficulties of accessing doors in gated neigiaborhoods, restricted entry apartment houses, condominiums and rural areas.

In the 1993-1994 election cycle, a Gubernatorial election with two U.S. Senate races on the ballot, CRP made over 1.3 million GOTV phone calls to Republican households with more than one registered Republican voter resided. In the 1995-1996 election cycle, a Presidential election cycle, CRP made nearly 1.8 million GOTV phone calls. In the 1997-1998 Gubernatorial election cycle with one U.S. Senate race on the ballot, CRP made 2.15 million GOTV calls. In the 1999-2000 Presidential election cycle, CRP made 2.5 million GOTV calls.

b. *GOTV Mail:* CRP has employed GOTV mail programs, including its absentee ballot application mailings, sometimes including a "slate card list" of candidates for local, state and federal offices and ballot measure endorsements. Exhibit 3, Items B-F, include samples of such absentee ballot GOTV mailings.

In the 1993-1994 election cycle, CRP sent approximately 2.3 million absentee ballot/slate mailings to Republican households of two or more registered Republican voters.

In the 1995-1996 election cycle, CRP sent

approximately 2.25 million absentee ballot/slate mailings to such Republican households.

In the 1997-1998 election cycle, CRP sent approximately 2.5 million absentee ballot/slatemailings to such Republican households.

In the 1999-2000 election cycle, CRP sent approximately 5.2 million absentee ballot/slate mailings, in that case twice as many mailings as previously sent, to Republican households.

c. *GOTVDoorhangers and Persuasion Mail:* [3 PCS CDP 398]

Part of door-to-door GOTV campaigns is the "doorhanger slate" which is a piece distributed by walkers, both volunteer and paid, who go door-to-door and hang such cards on front doors in targeted precincts. The GOTV doorhangers supplement and reinforce CRP's and Republican County Central Committees' GOTV program directed to mobilizing Republican voters to go to the polls. The GOTV walk pieces are candidate collateral materials, and primarily are targeted toward "top of the ticket" (Gubernatorial and Presidential candidate) advocacy messages, in the latter case, exempt "collateral materials."

In the 1993-1994 election cycle, CRP paid for and Republican County Central Committees distributed approximately 1.5 million doorhangers and 2.3 million persuasion or advocacy walk pieces.

In the 1995-1996 election cycle, CRP paid for and Republican County Central Committees distributed approximately 1 .7 million doorhangers and 2.1 million advocacy walk pieces.

In the 1997-1998 election cycle, CRP paid for and Republican County Central Committees distributed approximately 1.3 million doorhangers and 7 million advocacy walk pieces.

In the 1999-2000 election cycle, CRP paid for

and Republican County Central Committees distributed approximately 1.4 million GOTV doorhangers and 7 million advocacy walk pieces.

11. <u>CRP's Generic Party Building Activities</u>:

CRP engages in a variety of generic "party building" activities. CRP mails to newly- registered voters urging them to affiliate with the Republican Party because the Republican Party shares their values of family, faith. neighborhood and nation. CRP disseminates generic [3 PCS CDP 399] "Register Republican" and "Join the Republican Party" messages at county fairs -- which are important public gatherings in the fifty-eight counties of California -- as well as at ethnic fairs, new citizen "swearing in" ceremonies, and in ethnic and minority newspapers and periodicals.

Generic message communication affords the Republican Party an opportunity to identify with California's growing minority and ethnic population. Generic message communication fosters associational rights. CRP has established a "Party Base Building" Subcommittee of its Board of Directors, and has initiated ethnic conferences in connection with Party conventions, in order to attract more ethnic minority members into the Party. Bylaws, Art. II, Section 2.05.04(F). Plaintiff and Party Chairman Shawn Steel's "Blue Badge" project also focuses on communicating with ethnic minority groups the CRP's efforts to increase Party state central committee membership for such groups.

12. CRP's Fundraising Programs and Activities:

CRP has employed a wide variety of fundraising techniques and methods to raise "hard" federal dollars as well as permissible non-federal dollars.

a. *Direct Mail Fundraising*

It is my understanding that CRP was an early pioneer in

the late 1970s and early 1980s of small dollar direct mail fundraising programs. These direct mail fundraising programs commenced with the development of a "donor file" through test mailings and roll-out mailings to registered Republican voters, and persons on lists and files rented from third party groups or obtained from direct mail vendors.

CRP's direct mail "donor file" mailing programs include a regular annual "Membership Renewal" mailing to known donors, usually sent under the name and signature of the Party's Chairman, with appropriate follow-up mailings to such donors. They also include special, [3 PCS CDP 400] topical mailings that feature the Party's Chairman, or another prominent Republican signer (such as a President or Presidential candidate, a Governor, a former high level official, such as former President Reagan).

Other, topical special mailings, and emergency appeals as the election draws nearer and voters, and donors, focus on an election, are sent to the donor file. A donor file may be mailed as often as eight times in a year.

To maintain a direct mail fundraising "donor list," the CRP must continually spend money "prospecting," that is, seeking new donors through the rental and mailing to new lists of potential donors that are the property of direct mail vendors, third parties, or vendors of third parties. Prospecting, or "list maintenance" and development, is expensive, and often loses money. Nevertheless, they are essential to keep the file current and productive.

Direct mailings largely raise permissible federal dollars, with an average return of between $20 and $40 per donor. These mailings occasionally realize corporate or other donations permissible under California law but not under federal law. Thus, CRP's donor solicitation disclaimers contain appropriate information advising the potential donor that permissible federal "hard dollar" contributions will be placed in the Party's federal account, and that corporate and other permissible contributions will be placed in the Party's

non-federal account.

CRP's direct mail fundraising program returns are set forth in Exhibit 7, Chart 11, entitled "Major Funding Sources by Year, 1985-2001." The data shows that direct mail returns reached a high in 1986 of over $2 million and has declined to under $1 million since 1997. I understand this decline is consistent with the historic decline trend in political direct mail fundraising returns. [3 PCS CDP 401]

b. *Telemarketing*

CRP's telemarketing program began in the early 1990s, as reflected in Exhibit 7, Chart 11. The trend of returns from such fundraising has grown, as telemarketing first supplemented and to some extent supplanted direct mail fundraising.

CRP's telemarketing program also is directed at small "hard dollar" fundraising primarily for its federal account. Similar to direct mail fundraising, the average telemarketing donation is a federal "hard dollar" donation of between $20 and $40.

Also like direct mail, telemarketing prospecting to maintain and develop a "donor file" is expensive and often unproductive.

c. *Major Donor Programs*

CRP has developed a variety of multi-level major donor fundraising programs over the last three decades.

The CRP's "Golden Circle" fundraising program was introduced and spearheaded by John Wayne and former President Ronald Reagan while he was Governor of California. The "Golden Circle" program sought contributions of $1,000 initially, and that donor level was raised in the mid-1990s to $1,500 for individuals and $2,500 for business entities.

The CRP's "Golden Bear" Program and the "Team California" Program developed in the late 1980s. The "Golden Bear" Program was a California - initiated program, which sought donations from individuals and businesses at the $10,000 level. The "Team California" Program developed as an adjunct to the RNC's "Team 100," Program. The initial "Team

California" Program sought contributions of $25,000 from California donors to the RNC's "Team 100." This coordinated fundraising activity arose out of a practical concern shared by RNC and CRP that California has traditionally been an important source of fundraising for national political [3 PCS CDP 402] parties; that California was a "net" fundraising source for national dollars; and that California's major Republican donors had a particular interest in supporting the political viability of the CRP program, because of the importance of maintaining control of the California Governorship and Legislature, its role in the determination of national Presidential elections, and their general interest in California state and local elections.

The "Team California" Program reached its zenith in returns in 1990, a Gubernatorial not a Presidential election year, and in 1992, a Presidential election year in which the George H.W. Bush- Dan Quayle Presidential election campaign largely withdrew from actively contesting for California's electoral votes in August, 1992.

d. *Event Fundraising*

CRP relied upon "top-of-the-ticket" annual fundraising dinners featuring either an incumbent President, such as California's President Ronald Reagan, or an incumbent Governor, such as former Governors George Deukmejian and Pete Wilson. The allure of such fundraising events was the "star attraction" of featuring and honoring the top-of-the-ticket candidate or officeholder.

CRP's event fundraising also has relied upon occasional visits of federal candidates, such as former Speaker of the House of Representatives, Newt Gingrich, or "surrogates" such as members of the President's cabinet or a Presidential spouse or Presidential candidate spouse, such as Elizabeth Dole. Because of the large number of members of the California Republican Congressional Delegation, between 20 and 28 members over the years, I understand that such federal officials appear at the Party's convention events or as adjunct guests at

fundraising events featuring the top-of-the-ticket individuals. However, members of the California Republican Congressional delegation less often are invited to be featured fundraising attractions at CRP's headline fundraising events. More frequently, such federal officials appear as fundraising attractions for Republican County Central Committees' annual or special fundraising events.

These events are generally medium level "hard dollar" federal fundraising events, and not large non-federal dollar events.

13. <u>CRP's Expenditures Affected by BCRA</u>:

CRP raises and spends millions of dollars each election cycle in support of its principles and goals, including its administrative and overhead costs, voter registration and GOTV activities, grass roots activities in support of local Republican County Central Committee volunteer organization, ballot measures, candidates for state and local offices, and candidates for federal offices.

A. <u>Total Dollars Raised and Spent -- Exhibit 7, Chart 1; Campaign Finance Reports</u>:

In the 1993-1994 election cycle, a non-Presidential election at which the Gubernatorial and major State Constitutional offices and two U.S. Senate races also were on the ballot, CRP raised $15,129,602 and spent $15, 244,312. (See Exhibit 7, Chart 1 incorporated by reference herein.) Of the amounts raised, $ 10,065,539 was for its non-federal account and $5,064,063 for its federal account. (CRP State Campaign Finance Reports, on file with the California Secretary of State; CRP Federal Campaign Finance Reports, on file with the Federal Election Commission (<http://herndon1.sdrdc.com/cgi-bin/fecimg/?COO 140590>,)

In the 1995-1996 election cycle, a Presidential election in which no U.S. Senate races were on the ballot, CRP raised $23,833,790 and spent 23,326,244. (Id.) Of the amounts raised, $15,156,863 was for its non-federal account and $ 8,676,927 for its federal account. (CRP State Campaign Finance Reports, on

file with the California Secretary of State; CRP Federal [3 PCS CDP 404] Campaign Finance Reports, on file with the Federal Election Commission (<http://herndon1 .sdrdc.com/cgi-bin/fecimg/?COO 140590>,)

In the 1997-1998 election cycle, at which the Gubernatorial and major State Constitutional offices and one U.S. Senate race also were on the ballot, and during part of the cycle (most of calendar year 1997), a restrictive state campaign finance measure was in effect that substantially suppressed non-federal fundraising, CRP raised $ 18,926,126 and spent $19,453,582. (Id.) Of the amounts raised, $ 11,661,806 was for its non-federal account and $ 7,264,320 for its federal account. (CRP State Campaign Finance Reports, on file with the California Secretary of State; CRP Federal Campaign Finance eports, on file with the Federal Election Commission (<http ://herndon1.sdrdc.com/cgi-bin/fecimg/?COO 140590>.)

In the 1999-2000 election cycle, a Presidential election in which one U.S. Senate race was on the ballot, CR? raised $35,658,711 and spent 534,658,7 11 (Id.) Of the amounts raised, $17,180,588 was for its non-federal account and $ 18,478,123 for its federal account. (CRP State Campaign Finance Reports, on file with the California Secretary of State; CRP Federal Campaign Finance Reports, on file with the Federal Election Commission (<http://herndon1.sdrdc.com/cgi-bin/fecimg/?C00 140590>.)

B. <u>BCRA Effects on Raising of State-Permitted Campaign Funds -- Exhibit 7 Charts 5, 6A, 6B and 8:</u>

In the 1995-1996 election cycle, a Presic ntial election in which no U.S. Senate races were on the ballot, CRP raised $2,520,000 from donors of $10,000 or more in non-federal funds per calendar year, consisting largely of corporate and business entity funds permissible under California state law for use in connection with state and local elections, and permitted by federal law for use in joint federal]non-federal allocated activities. These funds were raised from 76 [3 PCS CDP 405]

separate donors. (Exhibit 7, Chart 5, incorporated by this reference herein.) These funds constituted 10.57% of total funds raised by CRP and 16.6 % of non-federal funds raised by CRP in that election cycle. Of these funds, $1,760,000 or 69.1%, would have been unavailable had CRP been limited to raising funds subject to the "Levin" limits of section 323(b)(2)(iii)of FECA, as enacted by section 101, of BCRA. (See Exhibit 7, Charts 6B and 8, incorporated by reference herein.) Only $760,000 of such donors' contributions of $10,000 or more to CRP's state campaign committee would have been available for use in that cycle had CRP been limited to raising funds subject to the "Levin" limits. [3 PCS CDP 406]

In the 1997-1998 election cycle, at which the Gubernatorial and major State Constitutional offices and one U.S. Senate race also were on the ballot, and during part of the cycle (most of calendar year 1997), a restrictive state campaign finance measure was in effect that substantially suppressed non-federal fundraising, CRP raised CRP raised $1,325,000 from donors of $10,000 or more in non-federal funds per calendar year, consisting largely of corporate and business entity funds permissible under California state law for use in connection with state and local elections, and permitted by federal law for use in joint federal/non-federal allocated activities. These funds were raised from 70 separate donors. (See Exhibit 7, Chart 5, incorporated by this reference herein.) These funds constituted 7.00% of total funds raised by CRP and 11.36 % of non-federal funds raised by CRP in that election cycle. Of these funds, $625,000 or 47.2%, would have been unavailable had CRP been limited to raising funds sub, ect to the "Levin" limits of section 323(b)(2)(iii)0fFECA, as enacted by section 101, of BCRA, (Exhibits 6B and 8, incorporated by reference herein.) Only $700,000 of such donors' contributions of$l0,000 or more to CRP's state campaign committee would have been available for use in that cycle had CRP been limited to raising funds subject to the "Levin" limits.

In the 1999-2000 election cycle, a Presidential election

in which one U.S. Senate race was on the ballot, CRP raised CRP raised $5,397,400 from donors of $10,000 or more in non-federal funds per calendar year, consisting largely of corporate and business entity funds permissible under California state law for use in connection with state and local elections, and permitted by federal law for use in joint federallnon-federal allocated activities. These funds were raised from 166 separate donors. (See Exhibit 7, Chart 5, incorporated by this reference herein.) These funds constituted 15.14% of total funds raised by CRP and 31.41 % of non- federal funds raised by CRP in that election cycle. Of these funds, $3,737,000 or 69.2%, would have been unavailable had CRP been limited to raising funds subject to the "Levin" limits of section 323(b)(2)(iii)0fFECA, as enacted by section 101, of BCRA. (See Exhibits 7, Charts 6B and 8, incorporated by reference herein.) Only $1,660,000 of such donors' contributions of $10,000 or more to CRP's state campaign committee would have been available for use in that cycle had CRP been limited to raising funds subject to the "Levin" limits.

C. BCRA Effects on National Party Transfers Exhibit 7, Charts 2, 3, 7 and 8:

Exhibit 7, Charts 2, 3, 7 and 8 identify the CRP's receipt of funds transferred from the federal and non-federal accounts of the national party committees (RNC, RNSC, and NRCC) during the election cycles since 1991.

Chart 2, entitled "National Party Transfers by Election Cycle, 1991-2000," identifies the dollar amounts of non-federal and federal dollars transferred by cycle.

In the 1991-1992 cycle, $533,750 in total, consisting of $50,000 in federal and $483,750 in non-federal funds, were transferred to CRP. In the 1995-1996 cycle, $11,548,431 was transferred, of which $9,032,399 was non-federal funds and $2,516,032 in federal funds.

In the 1997-1998 cycle, of the $3,274,606 total, $2,545,573 were federal funds, and [3 PCS CDP 407] $729,035 were non-federal funds. The highest total, $12, 957,872 in the

1999-2000 cycle, was composed of $6,132,373 in federal and $6,825,499 in non-federal funds.

The percentages of such funds to CRP's total election cycle funding has varied from 48.4% of total funds in the 1995-1996 election cycle to 17.3% in the 1997-1998 cycle and 36.3% in the 1999-2000 cycle, with a decade average of 29.4%.

Chart 7, entitled "Bi-Partisan Campaign Reform Act Costs by Election Cycle, 1995-2000," is an attempt to provide an estimate of the impact of BCRA on large-dollar receipts, including (a) the elimination of all national party transfers, as prohibited by BCRA; (b) the reduction of permissible non-federal funds which had been unlimited prior to BCRA with the brief exception of the 1997 calendar year in which CRP was subject to now-invalidated contribution limits of $5,000 per year for state and local election purposes, to the $10,000 per year "Levin" amounts; and (c) the hypothetical doubling of federal donations from maximum donors, who could give $5,000 per year prior to BCRA and would be permitted to increase their donations. Chart 7 demonstrates that in the "best case" circumstances that had all maximum federal donors doubled their federal contributions to $10,000, CRP would have suffered a net loss of $13,018,000 in the 1995-1996 election cycle, of $3,759, 608 in the 1997-1998 election cycle and of $10,634,872 in the 1999-2000 election cycle. Chart 8 quantifies this loss as a percentage of CRP's total revenues for that election cycle as follows: a 54.6% loss for the 1995-1996 election cycle; a 19.9% loss for the 1997-1998 election cycle and a 30.3% loss for the 1999-2000 election cycle.

14. Effect of BCRA on CRP Programs and Activities:

Under the new definition of "federal election activity," virtually all of CRP's activities in support of its State and local candidates, as well as most of its "generic" party-building activity, [3 PCS CDP 408] will be considered "federal election activity" even though those activities have only a remote or indirect effect on any federal election or, in some cases, no

effect at all. As a result, non-federal money cannot be used at all for these activities. This has the following consequences for CRP's activities:

a. *Voter registration activities.* The BCRA makes all voter registration activities within 120 days of any election including a federal office "federal election activity." This includes primary elections. This means that in an election year, virtually all voter registration activity must be paid with federal money, or a combination of federal and "Levin" money. The view that this activity is for the purpose of "influencing" a Federal election misunderstands that nature of party registration activity. Although CRP has allocated the costs of voter registration between federal and non-federal money because required to do so by the FEC, it is oflen the case that voter registration activities are primarily driven by the desire to affect State and local races.

For example, this is a non-Presidential year with no U.S. Senate races on the ballot. However, CRP has registered more than 300,000 Republican voters.

b. *GOTV activities.* The BCRA defines "federal election activity" to include "voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot." This means that virtually all activity in support of State candidates will be "federal election activity" regardless of the relative importance of the Federal offices on the ballot.

c. *State candidate mail.* Even if the mail only identifies a State candidate, if it also encourages persons to vote, it is GOTV activity and must be paid with federally limited funds. This mail typically gives both the election date and the person's polling place -- both GOTV criteria under the FEC's regulations. CRP typically spends between $2- 4 million in non-federal funds [3 PCS CDP 409] on its mail program in support of State candidates -- mail that does not include federal candidates. Non-federal money can no longer be used for this

State mail after the BCRA goes into effect.

d. *Mail in support of or opposition to ballot measures.* The same restrictions apply if the mail urges voters to vote. It does not matter that no Federal candidate is mentioned.

e. *Party GOTV "telephone banks."* In the past, this activity has been paid with non-federal money if only State candidates were endorsed. If both State and federal candidates were endorsed, the cost was allocated between federal and non-federal money. After the BCRA goes into effect, all phone bank GOTV activity will have to be paid with federally - limited money, even if it only mentions State candidates and does not mention a federal candidate.

f. *Grass-roots campaign activities* such as buttons, bumper stickers and yard signs that mention a federal candidate are "federal election activity." In the past, the costs of these items have been allocated between federal and non-federal money. After the BCRA, they must be paid with federally - limited funds, even though the cost of these items are not considered "contributions" under the FECA. Many of the experts believe that the BCRA will result in the parties engaging in more grass-roots activities; if these items have to be financed with extremely limited federal money, and have to compete with other party expenses, in my view as discussed more fully below, the likely result will be less, rather than more, grass-roots activity.

g. *GOTV Slate cards/doorhangers.* These are cards or mail pieces listing all the party's endorsed candidates. They are usually tailored for distribution in a particular local area, and State and local races dominate numerically over the federal races. Like grass roots activities, the expenses of such slate cards/doorhangers have been allocated between federal and non-federal money according to the over-all space occupied by the federal candidates. If these [3 PCS CDP 410] are considered GOTV activity, non-federal money can no longer be used.

h. *Public communications that refer to a clearly*

identified Federal candidate if they "promote or support" a federal candidate. In the past, CRP has produced mail, television, and radio advertisements on behalf of State candidates containing endorsements by a federal candidate. In the past, these could be paid with non-federal money as long as the federal candidate's election was not referenced. It is my understanding that such endorsement communications will now have to be paid completely with federal money.

i. *Generic party activity.* The BCRA defines "generic activity" as any activity that promotes a party and does not promote a federal or non-federal candidate. It is difficult to imagine many party activities that could not be characterized as "promoting" the party. Although the FEC has limited this provision to even - numbered years, all "generic activity" in those years must be paid with federally- limited funds. In the past, the costs of these activities would have been allocated between federal money and non-federal money. For example, if CRP sends a mailing to new citizens and newly- registered Republican voters explaining the principles of the Party and urging them to actively support the Party, in an even numbered year, non-federal funds cannot be used to print or mail this mailing.

15. BCRA Effects on CRP Fundraising Activities:

I have reviewed CRP's past fundraising activities since 1995. While there is some uncertainty about just what roles national party officials, federal candidates and officeholders may play in fundraising activities, and if fully prohibited from directly or indirectly soliciting non-federal or "Levin" funds for CRP whether CRP could find comparably- effective persons to substitute in the fundraising roles played by such persons, my views of the potential impacts of BCRA on CRP's fundraising activities are as follows: [3 PCS CDP 411]

a. Cutoff of National Party Transfers to CRP: The elimination of national party transfers together with cutoff of non-federal funds together will reduce CRP's available budget

by nearly 40% in Presidential election cycles and 20% in non Presidential election cycles. With an average spending of nearly $30 million in Presidential election cycles and $17.5 million in non-Presidential election cycles in the 1993-2000 period, this would result in a reduction of from $30 million to $18 million available for Presidential election cycles, and from $17.5 to 14.0 million in non-Presidential election cycles. With CRP administration and fundraising costs averaging about $4.5-5.0 million per election cycle, the amounts available for voter registration, get-out-the-vote and direct candidate support activities for local, state and federal candidates and ballot measures would be reduced from an average of about $25 million to about $13 million in Presidential election cycles and from about $12.5 million to about $ 9.0 million in non-Presidential election cycles.

b. Impact on Overall CRP Spending and Effective Campaigning: The dollar impact of this diminution in funds available for CRP political projects, including direct support of State and local candidates and other activities such as voter registration, get-out the-vote, and local political party support operations, will be dramatic. This reduction would be approximately 48% in Presidential election cycles and 28% in non-Presidential election cycles. This impact may well be exacerbated by the fact that much of this activity may require federal "hard" dollars, and not "Levin" funds, or may not be available to transfer to local Republican County Central Committees or candidates due to other disqualifying factors such as (1) the prohibition on transfers to [3 PCS CDP 412] an Internal Revenue Code Section 527 organization; (2) the prohibition on coordinated fundraising activities by state and local political party committees.

c. Eliminating National Party Transfers Will Affect Substantially More CRP Activity than RNC - Funded "Issue Advocacy": By prohibiting national political parties from raising any "soft" or non-federal dollars, and also prohibiting the transfer of non-federal dollars to state and local party

committees, BCRA clearly eliminated the national political parties' opportunities to provide funding of "issue advocacy" by State political parties such as the CRP. However, these prohibitions, combined with BCRA's redefinition of "federal election activity" to encroach upon activities for which state and local parties had used permissible State funds for the non-federal allocable portion of voter registration, voter identification and get-out-the-vote, and BCRA's imposition of "Levin"fund limits on such State- permissible money, affect far more than State political parties' "issue advocacy" activities. In my view, CRP will suffer an diminution of its ability to fund purely state and local candidate advocacy activities, and will require CRP to make substantial spending reallocations. This in my view will likely will result in CRP spending quite a bit less money on grass roots support, communications concerning issues of state and local interest to its members at the local grass roots levels, and will hamper the very activities the Defendants'/Intervenors' experts suggest as the "magic bullet" to mitigate BCRA's impacts on political parties' ability to campaign effectively.

d. *Potential Increase In Amount of Federal Contributions Due to Doubling of Annual Contribution Limit to $10,000:* The potential to double maximum federal contributions of donors who have a history of making contributions to CRP of the [3 PCS CDP 413] maximum $5,000 per year will be reduced by the prohibition on using "top-of-the-ticket" attractions such as a Presidential candidate or high level federal official orcandidate to help raise such funds, and by the perceived diminution in the Party's potential effectiveness. Moreover, the increase in amounts that may be contributed directly to federal candidates may cause donors to shift their contributions from the party to candidates. The potential effect on CRP of the increase in a donor's aggregate contributions from $25,000 per calendar year to $95,000 per election cycle, with segmented "sub- limitations" on a donor's aggregate contributions to state and local political parties, is

uncertain.

e. *Prohibition on CRP Chairman 's "Levin" and Non-federal Dollar Fundraising:* CRP's inability to use its Chairman, who has been a principal fundraiser for the CRP and whose fundraising responsibilities are set forth in the CRP's bylaws, will have a certain, adverse impact not only on "Levin" and non-federal dollar fundraising, but also on federal dollar fundraising. CRP's Chairman is a member of the RNC and thus is prohibited from soliciting non-federal funds under section section 323(a)(2) and 323(b)(2)(D) of the FECA as amended by section 101 of BCRA. This prohibition will have its most dramatic effect on CRP's raising of "hard" federal dollars through its direct mail program because this program also raises some "soft" non-federal funds. BCRA's prohibition, with criminal penalties as well as enhanced fines for violation of this prohibition, will require CRP to steer wide of protected activity and avoid the use of the CRP Chairman for even such predominantly federal dollar fundraising.

f. *Prohibition of Fundraising for State and Local Party Committees by Federal* [3 PCS CDP 414] *Candidates and Officials:* CRP's and Republican County Central Committees' reliance upon federal officials and candidates to raise state-permissible money to assist in both local and state campaign activity will have a significant but uncertain effect upon its fundraising capability

g. *Impact on CRP 's Major Donor Fundraising Programs:* CRP's newer large dollar Major Donor fundraising programs, in particular the Team California Program, will be substantially and adversely affected by BCRA's prohibition on "top-of-the-ticket" star power of Presidential, high level federal officials and members of Congress to participate in these programs. These same large dollar Major Donor fundraising programs will be affected by the "Levin" limits in almost as substantial a way. (See Exhibit 8, Charts 4, 5, 6A, 6B, 7 and 11.)

h. *Direct Mail and Telemarketing Programs:* CRP

has extensive direct mail and telemarketing fundraising programs that will need to be funded from federal and "Levin" dollar sources. While I have stated in deposition that CRP can "work harder" to increase such fundraising, working harder also entails spending more money to develop and maintain such programs. The diminution of available funds will also adversely affect CRP's ability to increase these programs, because prospecting costs to develop and maintain active direct mail and telemarketing donor files are expensive.

i. *No Adequate Substitutes for Loss of Such Fundraising Program:*. Defendants/Intervenors' experts have suggested that door-to-door canvassing for fundraising may be able to supplant the loss of funds described above. However, the costs of organizing, recruiting, supervising and administering such a program at the [3 PCS CDP 415] local level will be substantial. Because BCRA also compartmentalizes and cuts off relationships between the state and local party committees, CRP's ability to assist Republican County Central Committees to develop such programs, or to recruit and utilize local personnel for such programs administered at the state level by CRP, is doubtful. Finally, grass roots volunteers would be diverted from other tasks, such as voter registration and campaigning to organize and manage such a proposed door-to-door canvass program. Finally, door-to-door canvassing in an urban/suburban State like California is frustrated by the prevalence of gated neighborhoods, restricted entry apartment houses, condominiums and rural areas.

16. Other BCRA Effects:

I have reviewed BCRA's other provisions as well. Again, while some of the provisions of BCRA are uncertain, and their application may depend on interpretation by the courts and the Federal Election Commission, my view is that a number of the provisions of BCRA also will have a very substantial impact on CRP's ability to raise funds to support its activities, and will

substantially impair its ability not only to campaign effectively in support of its candidates, but also to speak on ballot issues and other issues, to associate and to foster association among Republicans at the local, state and federal levels. In particular, the cutting off of relationships between the national, state and local parties will have a very detrimental impact on the grass roots organizational capabilities of the Republican Party.

a. *Prohibition on State's National Committee Members' Fundraising for CRP:* RNC officials including our Chairman and National Committee members will no longer be able to raise non-federal money for CRP.

b. *Prohibition on State's National Committee Members Fundraising for Republican* [3 PCS CDP 416] *County Central Committees:* RNC officials including our Chairman and National Committee members will no longer be able to raise non-federal money for Republican County Central Committees.

c. *Prohibition on Federal Candidates and Officeholders' Fundraising for CRP and Republican County Central Committees:* Federal candidates and members of Congress officials including our Chairman and National Committee members will no longer be able to raise non-federal money for CRP or Republican County Central Committees.

d. *Diminution of Political Party Speech With Respect to Ballot Issues and Other Issues:* CRP will no longer be able to support ballot measures and in particular state and local initiative, bonds, and referenda, because organizations formed to support such measures under California law are organized as tax exempt organizations under Section 501(c)(4) of the Internal Revenue Code. CRP will be unable to make contributions of money or "in- kind" to such organizations, which are considered "contributions" under California law and BCRA. Such ballot measure committees are organized as 501c4 organizations, and often engage in what would be considered "federal election activity" including voter registration and get-out-the-vote and CRP's endorsement spending would be an "in-kind" contribution prohibited by section 323(d)(l) of FECA.

e. *Prohibition of Transfers of Non-Federal Funds from CRP to Republican County Central Committees:* CRP will no longer be able to provide substantial county support activities that help open party headquarters and phone banks during election periods, both under the prohibition of section 323(d)(2) of FEC as enacted by section [3 PCS CDP 417] 101 of BCRA, because such committees are organized under Section 527 of the Internal Revenue Code, and to a more limited extent, such CRP fund transfers will require federal or "Levin" funds and not funds that are permissible under California Government Code Section 85303(c) for these purposes.

f. *Substantial Interference with Grass Roots Voter Registration Activities of CRP 's Operation Bounty:* CRP will be unable to operate its Operation Bounty program in which Republican County Central Committees, Republican volunteer clubs, and state and local candidates are the primary participants. All of these organizations are tax exempt Section 527 Internal Revenue Code organizations, including state and local candidates whose committees also are section 527 IRS organizations.

g. Shifting of Voter Registration from Grass Roots Volunteers to Paid Professionals Will Discourage Grass Roots Participation in Party: Rather than rely upon these grassroots volunteer organizations that are Section 527 tax exempt organizations, CRP will be forced to rely more upon paid professional vendor operations, which will further discourage the grass roots volunteers, and frustrate their involvement in other party mobilization tasks.

h. *"Either/Or" Requirements of Section 44] a(d) (4) for Coordinated Expenditures and Independent Expenditures:* Because CRP would be prohibited from engaging in "coordinated expenditures" on behalf of a federal candidate if any local Republican County Central Committee made a single dollar of "independent expenditures" on behalf of such candidate, and vice versa, Republican County Central Committees would be prohibited from making "independent

expenditures" such as putting a slate listing in a newspaper without coordinating that activity with the federal candidate, if [3 PCS CDP 418] CRP had made "coordinated expenditures" on behalf of the candidate. Because BCRA attempts to cut off coordination between the state and local parties in fundraising, and also restricts the interaction that they have traditionally had with respect to voter registration, phone bank and fundraising/transfer activity, their ability to communicate about such "coordinated expenditures"/"independent expenditures" activity also will diminish. CRP will need to spend resources to monitor such local activity in order to protect its ability to do "coordinated expenditures" on behalf of a federal candidate. Moreover, one, small last minute "independent expenditure" on behalf of a federal candidate by a Republican County Central Committee could make illegal previous, and more substantial, "coordinated expenditure" activity by the CRP.

i. *Fundamental Interference With California Law Promoting State and Local Campaign Contributions to and Expenditures by Political Parties:* BCRA conflicts with Proposition 34, and will directly affect CRP's and RCCC's ability to accept contributions for state and local campaign activity specifically identified in Prop 34 to include voter registration and get-out-the-vote and other non-direct candidate support activities including communications with CRP's members, who are registered Republican voters (Gay. Code 85312). BCRA will interfere with CRP's and Republican County Central Committee's conduct of state and local election activity
and associational rights.

j. *Third Party Supplanting of Role of Political Parties:* Parties like CRP and Republican County Central Committees will be supplanted by other third party groups, including 501(c)(4) groups that may engage in voter registration and even advocacy with respect to federal and non-federal candidates without BCRA [3 PCS CDP 419] Restrictions.

The foregoing is true and correct Executed under penalty of perjury under the laws of the United States this 4th day of October, 2002, at Burbank, California.

/S/
RYAN M. ERWIN

DECLARATION OF DONALD FOWLER

[DEV 6, Tab 13]

The Affiant, being duly sworn, deposes and says:

1. My name is Donald L. Fowler. I reside in Columbia, South Carolina.

2. From 1971 until 1980, I served as Chairman of the South Carolina Democratic Party. From January 1995 until January 1997 I served as Chairman of the Democratic National Committee. Other positions that I have held with the Democratic Party are enumerated in Attachment A.

3. During the time that I served as chairman of the DNC, the DNC and its sister organizations, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee, raised large amounts of "soft money," but even so the Republican Party raised more of this category of political money during this same period than we did.

4. One of my principal responsibilities as Chair of the DNC was to raise money. Other DNC officers participated in this effort as did a number of Executive [2] Department and Congressional officials, including President Bill Clinton and Vice President Albert Gore, Jr. We raised soft money in amounts ranging from $5,000 to at least $400,000 from individuals, corporations, and labor unions. Hard money or federal money (the terms were used interchangeably) was raised in many small contributions of less than $100 up to a limit of $20,000.

5. During the summer of 1995 when the DNC was reviewing its fund raising policies, I recommended that we restrict contributions to the DNC to $2,000 or less for both hard and soft money. This recommendation was not adopted. Even so, I continued to be of the opinion that limiting contributions from individuals, corporations, unions and other entities to modest sums is good, essential, appropriate

public policy. Based on more than three decades of study, research, teaching, and fund raising at the local, state and national levels, my strong opinion is still that contributions to parties and campaigns should be limited to modest sums. This policy should apply to the Democratic and Republican committees and campaigns involving federal candidates.

6. This position is based on both logic and experience. Many contributors of large sums of money – both Republicans and Democrats – gain access to party and governmental officials that they otherwise would not have. With this access, contributors are able to make their cases to people who make public policy and take official governmental action. Those who contribute small amounts of money do not have this advantage and thus are unable to influence government with the same effectiveness. This money-based advantage exists not only in politics, but also in churches, universities, the United Way, the United States [3] Chamber of Commerce, and the National Organization of Women. This easy access based solely on money creates a favored class, the members of which have much greater opportunity to make their case for their issues and their interests. Logically and factually this tilts the American political system toward the rich and away from average citizens.

7. One should understand that this system has been legal – but critically flawed. Making it illegal is good policy that will improve the fundamental fairness of the American political system, one of the principal goals of McCain-Feingold.

8. Party and government officials participate in raising large contributions from interests that have matters pending before Executive agencies, the Congress, and other government agencies. Party officials, who are not themselves elected officials, offer to large money donors opportunities to meet with senior government officials. Donors use these opportunities – White House and

congressional meetings – to press their views on matters pending before the government. This process undermines our democratic processes and creates a lack of confidence in its fairness on the part of average citizens.

9. I do not fault party officials for playing this role so long as it is legal. Indeed, I believe that party officials have a responsibility to provide linkage between party members, the people and their government. Party officials should do this for small and large contributors and those who do not contribute at all. As long as the system permits big money contributors, however, they will inevitably have a disproportionate advantage. I recognize this as a fact. The solution is to change the party and campaign finance system to eliminate, or at least reduce, the extra [4] influence of contributors of large sums of money. I do believe and insist, however, that party officials have a duty and responsibility to provide linkage between the people and the government.

10. During my tenure as DNC chair there is no evidence that any one of our contributors of large sums of money received a quid pro quo, i.e., a substantive governmental benefit. But the mere fact that larger contributors have an advantage in making their case is sufficient reason to adopt new policies and procedures.

11. One much publicized case of large contributions and alleged political influence involved the Hudson Indian Casino. During the 1990's, Indian tribes in Wisconsin sought permission from the Department of the Interior to establish a casino in Hudson, Wisconsin. Certain Minnesota tribes opposed this application because they had pre-existing facilities where gambling took place. Some individuals in these tribes were supporters of the Democratic Party. At the request of an old friend whom I admired and respected, I met with some of the leaders of the Minnesota tribes who opposed the casino. They presented their views on the casino application to me. Thereafter, I informed White House officials of the meeting and asked them to review the matter

– without recommending any course of action. While I did not know it at the time, I later learned that representatives of both sides in this issue had contacted almost every member of the Wisconsin and Minnesota Congressional delegations as well as Administration officials. During the 1995-1996 election cycle, the Minnesota tribes contributed substantial sums of money to various Democratic Party committees. [5]

12. Soft money does not necessarily strengthen political parties. Both major parties use aggressive techniques in raising large sums of money because they feel that they are locked in an "arms race" with each other. Neither believes it can afford to fall behind the other, for fear of being outspent and losing key federal and state elections. This intense focus on raising larger and larger amounts from relatively few special interest sources does not make for stronger or better parties. This is particularly true for Democrats, because we are the party of average Americans, while most wealthy individuals and special interest groups tend to favor Republican politicians. Raising more money in smaller amounts from a larger number of people would certainly strengthen the Democratic Party by providing us with a stronger base of active citizens.

12. National parties can perform their important functions without large soft or hard money contributors. Large soft money contributions are a relatively recent phenomenon, yet the parties were vibrant, functional and effective prior to the advent of gross soft money contributions. They can continue to be effective without soft money.

13. The increased hard money limits in the Bipartisan Campaign Reform Act (BCRA) will permit both parties to raise sufficient money to support their operations and candidates. The argument that the BCRA "defunds" the parties and thereby cripples them is incorrect. Nothing in this legislation damages the operational integrity of the parties if the legislation survives in its entirety. Should the provisions limiting independent issue ads within sixty days

of a general election and thirty days of a primary be struck, it would reduce the role and significance of [6] political parties while accentuating the importance of special interest groups that sponsor such ads. If the courts should strike this provision, the role of special interest groups would be greatly enhanced and the role of parties would be significantly diminished. Court approval of the entire BCRA would clearly be in the interest of political parties and the political system in general.

14. This is particularly true in light of the fact that national, state and local party committees raised $741,000,000 in the 1999-2000 election cycle. With the increased limits for individual and PAC contributions applicable to post-2002 elections, this will increase substantially and parties and candidates will have sufficient money to make their cases to the people.

15. Except in very limited circumstances the use of soft money by state parties for activities that affect federal elections should be severely restricted. National parties in the past transferred hard and soft money to state parties with key *federal* elections, so that the state parties could use the money in legal ways that inevitably affected the federal elections. In the 1996 election cycle, the DNC transferred money to Democratic state parties in states where key elections were close. State parties which received these funds paid for the spots that ran in their states with this money using media firms that produced them and handled the media buys. These firms were composed of media and campaign advisors who were under joint contract to the DNC and the Clinton Re-election Campaign, a perfectly legal arrangement. With appropriate consultation with the DNC and others, these media and campaign advisors designed and wrote the advertisements with a combination [7] of soft and hard money. They were placed in strategic markets using a combination of hard and soft money.

16. There is nothing inherently wrong or bad about state and national party cooperation of this type. Indeed that is what parties are supposed to do. If there is a difficulty with this arrangement, it is because there is so much money involved which must be raised in large amounts thus giving those who contribute these large amounts the same advantages described in the paragraphs above.

17. As noted, I served as Chairman of the South Carolina Democratic Party. Based on that experience, I know first-hand that various activities such as get-out-the-vote campaigns, voter identification efforts, voter registration drives, and advertisements that mention federal as well as state candidates have the effect of promoting candidates for federal office as well as candidates for state office. Soft money mixed with hard money gives parties expanded capabilities. Eliminating soft money, however, does not mean that these joint efforts will have to be eliminated. They will have to be done more efficiently with lower overall expenditures with the assistance of local, grassroots volunteers.

18. In conclusion, contributions of large sums of money to parties and campaigns undermine the integrity of the political process, create inequities in the system, and produce a privileged class of political actors. Sound public policy dictates that these large contributions be eliminated from the American political system.

19. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DECLARATION OF MARY JANE GALLAGHER

I, Mary Jane Gallagher, do depose and state as follows:

1. I am the currently the Executive Vice President of the National Abortion and Reproductive Rights Action League ("NARAL"), a District of Columbia nonprofit corporation recognized as tax exempt under section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"). NARAL does not include any affiliates or any separately organized entity.

2. I have served in this position since June 2002. My primary responsibilities include interdepartmental coordination, budget oversight and implementation of NARAL's strategic plan.

3. NARAL has designated me pursuant to Federal Rule of Civil Procedure 30(b)(6) to respond in the form of a declaration to the requests for documents and notice of **[*2]** deposition served upon NARAL by the Republican National Committee ("RNC") on June 19, 2002 as part of its challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 ("BCRA"). In addition to providing this declaration, NARAL also produced documents to the RNC on July 23, August 1, August 2, and August 27. All of the documents produced by NARAL, as well as those NARAL documents that are exhibits to this declaration, are, to the best of my knowledge at this time, accurate and authentic copies of original documents either created by NARAL or maintained by NARAL in the regular course of business. Those documents that are pages printed from NARAL's internet website are also accurate and authentic copies of those pages, as they appear in electronic form on NARAL's website.

4. NARAL's position is that neither NARAL-PAC nor NARAL Foundation is covered by the subpoena received by NARAL. Although I am not an officer or director

of NARAL-PAC, I believe that the following information about NARAL-PAC is correct to the best of my knowledge at this time based upon my general knowledge of NARAL-PAC's operations.

Background

5. For over thirty years, NARAL has been the political arm of the pro-choice movement and an advocate of reproductive freedom and choice. NARAL works within the political and legislative systems to advocate for comprehensive reproductive health policies and to secure reproductive choice for all Americans. NARAL's mission is to develop and sustain a constituency that uses the political process to guarantee every woman the right to make her own decisions regarding the full range of reproductive choices, including preventing an unintended pregnancy, bearing healthy children, and choosing legal abortion. NARAL defends the right to choose and works to make abortion less necessary. Attached as Exhibit A to this declaration are **[*3]** copies of NARAL's Annual Reports for 1999-2000 and 2000-2001, both of which discuss NARAL's mission and objectives.

6. NARAL accomplishes many of its objectives by mobilizing its grassroots system to build broad-based support for the right to safe, legal abortion.

7. NARAL, NARAL-PAC, and NARAL Foundation are three separate organizations that work within the legal requirements limiting their respective activities to achieve similar pro-choice objectives.

8. NARAL works through the political and legislative systems to advocate for comprehensive reproductive health policies and to secure reproductive choice for all Americans. Using sophisticated political strategies, grassroots organizing, and lobbying efforts, NARAL has

fought and won numerous pro-choice victories in its 30-year history.

9. NARAL-PAC, a multicandidate committee registered with the Federal Election Commission ("FEC") and connected with NARAL, is a force behind the election of many pro-choice candidates. NARAL-PAC mounts multi-faceted campaigns, including paid advertising and get-out-the-vote efforts to elect pro-choice candidates. One of NARAL-PAC's strengths is its ability to mobilize volunteers into an effective get-out-the-vote force in the final weeks of a campaign. In addition to these get-out-the-vote efforts, NARAL-PAC provides financial contributions and its political advice and services also provide an edge to pro-choice candidates across the country.

10. The NARAL Foundation, a District of Columbia nonprofit corporation recognized as tax-exempt under section 501(c)(3) of the Code, was founded in 1977 to perform **[*4]** in-depth research and legal work, publish substantive policy reports, mount public education campaigns, and provide leadership training for grassroots activists across the nation.

11. NARAL is also affiliated with numerous state affiliates throughout the country that share the same mission as NARAL. The affiliates focus their activities at the state and local levels. NARAL currently has affiliates in twenty-six states: California, Colorado, Connecticut, Florida, Georgia, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Vermont, Virginia ("Affiliate In Formation"), Washington, Wisconsin, and Wyoming. Many of these affiliates maintain and operate their own websites and some of them work in close concert with the national organization in order to increase their ability to protect choice.

12. As Kate Michelman, president of NARAL, said on "Democracy Now!" on July 1, 2002, NARAL is a "business" engaged in political advocacy in competition with the Republican Party. NARAL's business is advocacy. In fact, according to Fortune Magazine, NARAL has become one of the top 10 advocacy groups in America.

NARAL Membership

13. NARAL currently has nearly 145,000 members throughout the country. These members pay at least $10.00 in annual dues.

14. NARAL's members have certain rights, including receiving communications from NARAL regarding issues affecting a woman's right to choose or reproductive freedoms, the right to vote on candidates for NARAL's Board of Directors, and the [*5] right to attend the annual meeting. Attached as Exhibit B are examples of materials sent to NARAL members.

NARAL's Fundraising & Expenses

15. In addition to the funding it receives through membership dues, NARAL also solicits and receives donations from the general public, Code section 527 organizations, and contributors at events. NARAL does not and is not required to track whether it receives donations from persons outside of the United States. However, NARAL believes that the majority, if not all, of its donors are residents of the United States. Support and revenue for NARAL and NARAL-PAC for 1999, 2000, and 2001 are summarized in the following chart:

	1999	2000			2001		
	Total	NARAL	NARAL-PAC	Total	NARAL	NARAL-PAC	Total
Membership Dues, Contributions and Bequests	5,066,999	5,831,100	444,207	6,275,307	13,105,721	1,361,585	14,467,306
Investment Income	58,052	48,869	8,371	57,240	81,443	24,752	106,195
Lobbying Service Income	236,667	264,612	N/A	264,612	654,411	N/A	654,411
Other	129	6,353	N/A	6,353	528,828	N/A	528,828
Totals	**$5,361,847**	**$6,150,934**	**$452,578**	**$6,603,512**	**$14,370,403**	**$1,386,337**	**$15,756,740**

16. NARAL solicits membership dues and donations using a variety of methods, including telephone solicitations, direct mailings, the Internet, fundraising events, and personal visits. Attached as Exhibit C are examples of solicitations sent by NARAL.

17. All of NARAL's activities are paid for through the donations that it receives and from income on NARAL investments.

[*6] 18. Individuals that contribute more than $1,000 to NARAL become members of NARAL's Justice Blackmun Society. This group of donors is further broken down into categories based on the amount of contributions given. The following chart lists each category, the amount required to become a member of each category, and the number of members in each category during the time period between April 1, 2000 and March 31, 2001:

Donor Category	Required Contribution	Number of Members
Life Trustees	$100,000 and up	19
Grand Trustees	$50,000 - $99,999	12
Trustees	$25,000 - $49,999	26
Patrons	$10,000 - $24,999	89
Benefactors	$5,000 - $9,999	128
Sponsors	$2,500 - $4,999	161
Members	$1,000 - $2,499	538

A list of the members in each category who allowed their names to be disclosed is included in the annual reports attached to this declaration as Exhibit A.

19. Although NARAL publishes the names of many of its donors in its annual report, NARAL is not required to do so under any federal law. In fact, many of NARAL's donors choose to remain anonymous. NARAL respects the rights of its donors to remain anonymous and does not publicly reveal the names of these donors unless the donor allows NARAL to do so. NARAL believes that the identities of donors who wish to remain anonymous are confidential. Moreover, NARAL believes that the names of its donors are constitutionally and legally protected from public disclosure.

20. Federal officeholders and candidates occasionally participate in NARAL's fundraising efforts. This participation includes signing direct mail materials, attending fundraising events, endorsing other NARAL activities and writing or signing a newsletter or [*7] annual report feature story. Attached as Exhibit D are examples of fundraising letters signed by federal officeholders or candidates on behalf of NARAL.

21. The following chart represents the amount spent by NARAL and NARAL-PAC on various functions during 1999, 2000, and 2001.

	1999	2000	2001
Political	1,149,843	1,013,468	7,336,828
Communications	346,638	630,911	825,835
Legal and Policy Research	155,682	210,659	218,249
Government Relations	298,597	344,296	450,235
Political Action Committee	827,546	283,858	1,289,268
Public and Member Education	954,294	1,368,917	1,402,192
Management and General	565,381	682,413	749,130
Fundraising	1,521,491	1,853,679	2,951,622
Total	**$5,819,472**	**$6,388,201**	**$15,223,359**

22. All of NARAL's operational expenses (rent, salaries, etc.) are paid for using donations to or investments or other income of NARAL.

NARAL's Involvement in Elections

23. For more than 30 years in every major election, NARAL has educated, organized and mobilized pro-choice voters across the country to elect pro-choice candidates. NARAL's objectives include helping to secure a pro-choice majority in the U.S. House of Representatives and Senate. To date, NARAL has been effective in advancing this objective. In fact, during the 2000 elections, NARAL was active in 110 races across the nation, winning 83 of them. Attached as Exhibit E is a copy of NARAL, Choice, and Women: Driving Forces in the 2000 Elections, a NARAL publication summarizing NARAL's impact on the 2000 elections.

[*8] 24. As indicated in NARAL's 2000-2001 Annual Report, NARAL's influence during the 2000 elections was "historic and, in many cases, decisive." In addition to defining choice as a central issue in the election, NARAL spent approximately $7.5 million and mobilized 2.1 million pro-choice voters during the 2000 elections. NARAL "made

3.4 million phone calls to pro-choice voters, mailed 4.6 million pieces of election mail to pro-choice households, educated voters and the media online, and organized thousands of volunteers to conduct phone banks, distribute literature, walk door-to-door and perform Election Day activities." Attached as Exhibit F are examples of the direct mailings and get-out-the-vote material used during the 2000 elections, and press releases discussing NARAL's efforts.

25. NARAL's voter turnout campaign was one of the largest in the country among organizations of its kind. As indicated in NARAL's 2000-2001 Annual Report, with "several important outcomes that could be traced directly to NARAL's involvement," "NARAL was one of the nation's most influential organizations in the 2000 elections."

26. NARAL started its Choice 2000 Campaign nearly two years before Election Day when, as stated in NARAL, Choice, and Women: Driving Forces in the 2000 Elections, NARAL set the following goals: "electing a pro-choice president and pro-choice Members of Congress, and elevating the right to legal abortion and reproductive rights as defining issues in the 2000 election."

27. Recognizing the presidential primary season as a critical time to educate voters on the candidates' views, NARAL's campaign began with the Iowa primary in mid-June 1999. As stated in NARAL, Choice, and Women: Driving Forces in the 2000 Elections, "NARAL developed and implemented an extensive Iowa media strategy, including press **[*9]** briefings and editorial board meetings, broadcast television and radio ads, and roadside billboards . . .."

28. In late-June 1999, NARAL launched several Internet banner ads criticizing George W. Bush's record on abortion issues. These ads ran for a full month on the websites of California's major newspaper outlets. NARAL

also held activist visibility events outside all seven of George W. Bush's Los Angeles events. These visibility events generated press coverage throughout California.

29. NARAL's activities increased toward the end of the 2000 presidential campaign. In October 2000, after carefully scrutinizing the poll numbers and gathering intelligence on the ground, NARAL concluded that Ralph Nader had gained sufficient support in seven states to allow George W. Bush to win those states. As indicated in the 2000-2001 NARAL Annual Report and NARAL, Choice, and Women: Driving Forces in the 2000 Elections, "[w]ithin 24 hours, NARAL launched a full-scale operation," including television advertisements costing approximately $1.5 million, rallies, and press conferences, all of which were intended to inform voters in those states about the dangers caused by Ralph Nader's candidacy. Ralph Nader's support plummeted, and Al Gore won all seven of the targeted states. Attached as Exhibit G are NARAL press releases relating to this effort.

30. NARAL engaged in independent expenditures during the 2000 election cycle. Although NARAL made independent expenditures on behalf of numerous candidates throughout the country, a significant portion of its independent expenditures were made for the purpose of supporting Al Gore's presidential candidacy. In fact, as indicated on NARAL's FEC reports from October 1, 2000 through November 7, 2000, NARAL spent approximately $3.8 **[*10]** million on independent expenditures supporting Al Gore. The bulk of this money was spent on media, direct mailings and phone banks expressly advocating the election of Al Gore.

31. NARAL made no independent expenditures in 1999. NARAL spent a total of approximately $6,103,475 in 2000 and approximately $200,554 in 2001 on independent expenditures.

32. NARAL has engaged in similar efforts in the past and intends to continue to do so in the future to the extent allowed by applicable law.

33. An example of one of NARAL-PAC's recent activities is the Pennsylvania Democratic gubernatorial primary in 2002 between Ed Rendell and Bob Casey.

34. As indicated on NARAL's website, "[t]he [2002] Pennsylvania Democratic gubernatorial primary provided NARAL-PAC with a unique opportunity to highlight the saliency of the choice issue and its ability to move voters while flexing its political muscle at the beginning of the 2002 mid-term elections."

35. Along with Pennsylvania's Campaign for Choice, the political arm of NARAL's Pennsylvania affiliate, NARAL-PAC engaged in "an extensive effort to raise awareness about the choice issue" and the importance of nominating Ed Rendell as the Democratic gubernatorial candidate. Attached as Exhibit H is NARAL-PAC's statement endorsing Ed Rendell.

36. NARAL-PAC also conducted an aggressive get-out-the-vote effort in the final weeks of the campaign. In fact, as indicated on NARAL's website, "over 20 staff from **[*11]** NARAL affiliates across the country [flew] in to join Pennsylvania staff and supporters, creating a virtual [get-out-the-vote] army." This "army" targeted neighborhoods throughout the Philadelphia area, where it distributed literature and get-out-the-vote material to residents and persuaded them to vote for Ed Rendell.

37. NARAL-PAC's get-out-the-vote initiative was extensive: over 75 in-state and out-of-state staff volunteers; 35,000 pieces of literature distributed in Philadelphia neighborhoods; 12,000 volunteer get-out-the-vote phone calls placed to NARAL members and donors; more than 50,000

get-out-the-vote phone calls to Democratic voters; 82,000 pieces of get-out-the-vote mail sent to Pennsylvanians; and get-out-the-vote television advertisements aired during the final seven days on cable channels in the Pittsburgh and Philadelphia markets. Attached as Exhibit I are examples of get-out-the-vote materials distributed, copies of the scripts of advertisements, and NARAL press releases describing the effort.

38. By educating, persuading, and mobilizing over 82,000 voters – nearly 6% of the primary voter turnout and 16% of Ed Rendell's total votes – NARAL-PAC proved to be a force in the campaign. NARAL-PAC spent more than $180,000 on in-kind contributions to Rendell's primary campaign. Considering that polls prior to NARAL-PAC's get-out-the-vote efforts showed Bob Casey with a lead among women voters, as indicated on NARAL's website, NARAL-PAC's efforts helped show that "communicating the threat to a woman's right to choose moves voters and has a significant impact in close races."

39. NARAL-PAC has engaged in similar efforts in the past and intends to continue to do so in the future to the extent allowed by applicable law.

[*12] 40. NARAL frequently endorses candidates in federal and state elections throughout the country. NARAL frequently issues press releases announcing its endorsements, sends direct mail advocating the election of its endorsed candidates, engages in grassroots activities designed to benefit its endorsed candidates, and runs television, radio, and print advertisements expressly advocating the election of its endorsed candidates. Attached as Exhibit J are examples of NARAL's statements endorsing candidates, press releases announcing the endorsements, and scripts from advertisements supporting these efforts.

Contributions to Candidates and Committees

41. NARAL-PAC frequently makes contributions to federal candidates and expenditures designed to influence federal elections.

42. The total contributions from NARAL-PAC to federal candidates during recent years, as indicated on forms filed with the FEC, are as follows: approximately $89,260 during 1999; approximately $419,208 during 2000; and approximately $275,922 through August 31, 2002. The vast majority of contributions during each election cycle have been to Democratic candidates.

43. NARAL-PAC's total receipts during recent years, as indicated on forms filed with the FEC, are as follows: approximately $1,408,126 during 2000; and approximately $730,553 through August 31, 2002. NARAL-PAC may only solicit contributions from NARAL members.

44. The total amount spent by NARAL-PAC during recent years, as indicated on forms filed with the FEC, are as follows: approximately $1,363,581 during 2000; and approximately $578,195 through August 31, 2002.

[*13] 45. NARAL-PAC does not generally make contributions to the federal accounts of political party committees. NARAL-PAC made no such contributions during 2000 and approximately $15,000.00 during 2001.

NARAL's Communications With Its Members and the General Public

46. NARAL communicates with its members on a regular basis through direct mailings, telephone calls, and occasional other events. Examples of NARAL's communications with its members are attached as Exhibit B.

47. NARAL also communicates with the general public through a variety of methods, including through NARAL's website, earned media, and the use of issue advertisements.

48. Although certain advertisements refer to clearly identified candidates, these advertisements do not expressly advocate their election or defeat. NARAL's issue advertisements focus on issues of importance to NARAL's members. NARAL engages in issue advocacy principally through direct mail and telephone calls, as well as on television and radio, and in public print media.

[*14] **NARAL's Legislative Activities**

49. NARAL's Government Relations Department employs 2 full-time professional lobbyists. In addition, several other NARAL employees also spend some amount of their time lobbying. Attached as Exhibit K are copies of NARAL's recent Lobbying Disclosure Act forms.

50. NARAL's lobbyists regularly telephone, write, and meet with members of Congress (and their staff) on issues of importance to NARAL's members. NARAL by and large lobbies pro- and "mixed-choice" members of the House and Senate and also contacts members of the Executive Branch. NARAL also occasionally engages in lobbying at the state level.

51. NARAL coordinates its lobbying activities with other organizations that share NARAL's interests. For example, NARAL has on occasion coordinated its efforts with Planned Parenthood to lobby on issues relating to reproductive rights.

52. NARAL spent less than $160,000 in each of years 2000 and 2001 on direct lobbying-related activities.

53. NARAL also encourages its members and supporters to contact and meet with federal, state and local officeholders to discuss issues of importance to them. For example, as part of NARAL's effort to defeat the nomination of John Ashcroft for Attorney General, NARAL encouraged its members and supporters to contact their Senators in opposition to his nomination. NARAL placed a link on its website through which more than 40,000 people were able to contact their Senator's office. NARAL's efforts generated more than 320,000 contacts to **[*15]** Senators' offices. Attached as Exhibit L is a NARAL press release relating to NARAL's efforts to defeat John Ashcroft's nomination.

54. NARAL's legislative efforts also include the publication of Congressional Record on Choice, an annual "report card" on every member of the House and Senate. This publication rates each Senator and Representative based on the votes he or she makes that are consistent with NARAL's position on certain key issues. Attached as Exhibit M is a copy of NARAL's 2000 Congressional Record on Choice.

NARAL's Other Advocacy Activity

55. NARAL also engages in other advocacy activity. This includes, among other activities, supporting and opposing ballot initiatives and referenda, polling, and transferring funds to other organizations.

56. NARAL occasionally becomes involved in efforts to support or oppose state ballot initiatives. For example, in 2000, NARAL worked to defeat a Maine ballot initiative that would have prohibited a variety of abortion procedures used throughout pregnancy. NARAL efforts included staffing 885 hours of get-out-the-vote phoning, contacting 18,000 pro-choice voters twice each, and conducting visibility events on Election Day. See NARAL's 1999-2000 Annual Report, attached as Exhibit A.

57. In 2000, NARAL was also involved in a ballot initiative in Colorado. NARAL opposed Colorado Amendment 25, which would have imposed additional requirements on women who seek to obtain an abortion. NARAL provided direct financial support to the Protect Families Protect Choice Campaign, an organization which conducted the in-state **[*16]** campaign to defeat the initiative, and included a "vote no on 25" message in more than 215,000 pieces of mail sent to nearly 43,000 pro-choice identified Colorado voters.

58. From time-to-time, NARAL conducts public opinion polling on issues of importance to NARAL's members. On occasion, NARAL releases the results of these polls to the public.

59. Occasionally, NARAL donates funds to other organizations. For example, NARAL has donated to the NAACP.

60. NARAL has approved personal or vacation leave, as well as leave without pay, for employees providing assistance and advice to candidates during the last few weeks of their campaigns.

61. While NARAL cannot predict how the BCRA will affect donor behavior, NARAL believes that some donors who previously made contributions to the political parties but are limited in doing so by the BCRA may consider, and may actually make, donations to non-party organizations, such as NARAL. Kate Michelman, the president of NARAL, was quoted in the Washington Post on June 23, 2002 as saying that soft money donors seeking to "elect people who embody their values will be looking to groups like NARAL, which do serious political work and are seasoned operatives, to invest in. If they [donors] can't give to the parties ... they are going to find other means."

62. NARAL does not believe that any of its activities corrupt or appear to corrupt any federal candidate or federal officeholder.

63. I declare under penalty of perjury that the foregoing is true and correct. Executed on September 27, 2002.

s/
Mary Jane Gallagher

[EXHIBITS OMITTED]

DECLARATION OF GERALD GREENWALD

[DEV 6, Tab 16]

1. My name is Gerald Greenwald.

2. I currently serve as Chairman Emeritus of United Airlines, the largest employee-majority-owned company in the United States. From 1994 through my retirement in 2000, I served as the Chairman and CEO of United. Prior to that, I was vice-chairman at Chrysler Corporation and worked at Ford Motor Company.

3. I also serve on the Board of Trustees of the Committee for Economic Development (CED), a nonpartisan organization of business and education leaders dedicated to policy research on major economic and social issues. CED is a trustee-directed organization; trustees alone set CED's research agenda, develop policy recommendations, and speak out for their adoption. A list of the Trustees is attached.[2]

4. CED has been an outspoken voice for the need for campaign finance reform and lobbied vigorously for passage of the Bipartisan Campaign Reform Act (BCRA). In April 2000, CED President Charles Kolb testified before the U.S. Senate Committee on Rules & Administration on the issue. CED representatives were regularly featured in editorials, articles and news reports about campaign finance reform. Many Members of Congress, including reform leaders Senators John McCain and Russell Feingold, used CED's work as evidence of the need to pass meaningful campaign finance reform legislation.

5. As noted, CED's Trustees are chairmen, presidents, and senior executives of major American corporations and university presidents. These business leaders have direct experience with campaign fundraising over the last fifteen years. They and their companies have been solicited by elected officials and party leaders for ever-increasing amounts of soft money corporate contributions to political parties (as well as for hard money contributions from corporate employees and the corporation's PAC if it has

one). These business leaders have accordingly had occasion to consider the pros and cons of contributing or declining to contribute. Based on this experience, CED's Trustees individually and as a group have developed a particularized understanding of how the soft money fundraising system works and how it impacts the integrity of our elected officials, the integrity of American business, and more generally the health of our democracy.

6. My clear conclusion, which I know is shared by CED Trustees generally, is that soft money fundraising by elected officials and party-officials and large soft [3] money contributions by corporations corrupt the solicitors and the givers alike, and certainly create an appearance among the electorate generally that American business buys influence and legislation.

7. When I talk with leaders of large labor unions, I have found that they share the concerns of the CED Trustees about the corrosive effect of large soft money contributions on the system.

8. The fact is that the people who raise large soft money contributions from business corporations and labor unions are often sitting Members of Congress who will have to consider matters that will affect the financial health or operations of the organizations being solicited. Often the Members who solicit large corporate contributions sit on committees that directly affect the corporation's business. Similarly, these Members' actions affect issues of interest to labor unions. Congress as a body and through these Congressional committees regularly considers matters that importantly affect both business and labor in regulated and unregulated industries—from tax legislation to trade legislation to industry deregulation to environmental legislation, to list just a few examples.

9. When sitting Members solicit large corporate and union contributions, the leaders of these organizations feel intense pressure to contribute, because experience has taught

that the consequences of failing to contribute (or failing to contribute enough) may be very negative. Business and labor leaders believe, based on their experience, that disappointed Members, and their party colleagues, may shun or disfavor them because they have not contributed. Equally, these leaders fear that if they refuse to contribute (enough), competing interests who do contribute [4] generously will have an advantage in gaining access to and influencing key Congressional leaders on matters of importance to the company or union.

10. The other side of the coin is that labor and business leaders are regularly advised that—and their experience directly confirms that—organizations that make large soft money donations to political parties in fact do get preferred access to government officials. That access runs the gamut from attendance at events where they have opportunities to present points of view informally to lawmakers to direct, private meetings in an official's office to discuss pending legislation or a government regulation that affects the company or union.

11. If an organization is solicited by a party official rather than an elected official, the effect is the same. Companies and unions know that party officials inform elected officials about who has given significant amounts; and party officials often promise access to elected officials to those who agree to contribute large amounts of corporate or union money.

12. In sum, most unions and corporations give large soft money contributions to political parties—sometimes to both political parties—because they are afraid to unilaterally disarm. They do not want their competitors alone to enjoy the benefits that come with large soft money donations: namely, access and influence in Washington. Though a soft money check might be made out to a political party, labor and business leaders know that those checks open the doors to the offices of individual and important Members of Congress and the Administration, giving donors the opportunity to

argue for their corporation's or union's position on a particular statute, regulation, or other governmental action. Labor and [5] business leaders believe—based on experience and with good reason—that such access gives them an opportunity to shape and affect governmental decisions and that their ability to do so derives from the fact that they have given large sums of money to the parties.

13. In these ways, the soft money loophole over the past two decades has created a deeply cynical environment of real and perceived corruption that traps American government, business, and labor unions.

14. This debilitating and demoralizing environment damages government and business alike. It goes without saying that maintaining governmental integrity is critically important to our democracy and our citizens' faith in their government. It is also important for American to have faith in the integrity of their business institutions and labor unions as well. The recent spate of deplorable corporate scandals has broadly demoralized America and this is having widespread and adverse political and economic consequences. It is not good for America when American citizens believe their business leaders are corrupt, and one element of that regrettably widespread perception is the appearance that business buys government decisions by making large political contributions.

15. Public policy decisions should be made and should appear to all to be made on the basis of the public interest—not on which corporation or labor union can give the most money to the political party in power. Even the appearance of this type of corruption weakens public confidence in governmental as well as business and labor institutions. [6]

16. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 02-582 (CKK, KLH, RJL)
Consolidated Actions

SENATOR MITCH McCONNELL, et at.,
Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, et al.,
Defendants.

DIRECT TRIAL TESTIMONY OF
PAUL R. HUARD

1. My name is Paul R. Huard. I am Senior Vice President for Finance and Administration of the National Association of Manufacturers, often referred to as NAM. From 1993 to 1999, I was NAM's Senior Vice President for Public Policy and Communications – an elegant term for chief lobbyist. For about 13 years before that, I was NAM's senior tax lobbyist.

2. NAM is the oldest and largest broad-based industrial trade association in the United States. Its membership comprises 14,000 companies and 350 member associations, meaning that NAM represents about 18 million individuals. Like many trade associations, NAM is incorporated. It is exempt from taxation under Section 501(c)(6) of the Internal Revenue Code.

3. To advance the interests of its members, NAM must regularly consult with Members of Congress, officers of the

Executive Branch, and others, including political party officials and current or likely candidates for election to Federal office. At the same time, NAM must consult and work with a wide variety of other politically active organizations. The groups we work with may range from other business associations to national labor organizations to citizen groups organized around specific policy views or objectives, depending on the issue.

4. On occasion NAM has run broadcast issue ads by itself and in its own name. For example, on two occasions in the late 1990's we ran ads advocating support of the President's tax proposals. In at least some of those ads we referred to the proposal as being that of the President and that was an important element of our message.

5. More commonly, however, NAM supports coalitions or similar groups that have formed around an issue or group of issues and that create and broadcast advertisements as part of their legislative or policy strategy. We may well support such groups with our own funds, and we

also may contact our members to urge them to support group efforts. To give one example among many, in 1996 NAM participated in a group of business associations known as The Coalition that was formed to broadcast ads to respond to the AFL-CIO's planned $35 million dollar issue ad campaign. We urged our members to provide support, and they contributed about $2 million to The Coalition.

6. Our partners in legislative efforts can vary widely depending on the issue. For example, our coalitions have worked with unions on issue ads on job-related issues such as drilling for oil in the Arctic National Wildlife Refuge or various EPA regulations that restrict coal mining. Similarly,

through the Alliance for Worker Retirement Security, we have worked with various associations of senior Americans.

7. NAM does not support issue ads as an end in itself. They are used to support some legislative or policy agenda. The effort to pass or defeat legislation also necessarily involves working closely with Members of Congress and their staffs, as well as with political parties and others who take positions on legislation and political policy. To give one example from among many, during 1996 NAM participated in the Thursday Group which was organized by Congressman Boehner to advance the legislative components of The Contract With America. That group brought together various associations who supported that legislative agenda and provided a forum for information exchange and planning. Congressman Boehner also brought in key members to discuss their areas of responsibility and interest.

8. Members of Congress are, in our democracy, elected to office. In selecting legislative and policy initiatives to support or oppose, they naturally must be concerned with the likely views of their constituents.

9. Thus, an important element of a legislative or policy agenda may be developing or demonstrating public support for or opposition to ideas or proposals. In some cases it may be necessary to pursue a nationwide shift in public attitude. In other cases, what is needed is education targeted to a few key districts or states. In some cases, the need is not to create a public position but to convince Members of Congress that such a position already exists. NAM has supported issue ads with all of these purposes.

10. NAM has run issue ads at times when no election was impending. In broad terms, however, Americans tend to have greater interest in political matters as an election approaches. At the same time, elected officials are most attuned to the views of their constituents in the pre-election period. Thus, for many purposes, the pre-election season is a critical time for issue ads. Conversely, after an election

public interest in public policy matters fades, perhaps due to fatigue. Then, few issue ads are run soon after an election.

11. The timing of other issue ads is driven by external events. For example, issue ads supporting a particular tax bill may well be needed as the bill approaches a vote. If it happens that primaries or elections are imminent, that does not diminish the need to be able to speak out right then.

12. There are many reasons that an issue ad may need to refer to the name of an elected official or candidate. Many bills are identified with particular sponsors and may be known by

DECLARATION OF THOMAS JOSEFIAK

I, Thomas Josefiak, hereby swear and depose as follows, based on my own personal knowledge:

1. I am currently the Chief Counsel of the Republican National Committee ("RNC").

2. The various RNC exhibits attached to this declaration are to the best of my knowledge true and correct copies of records prepared and kept by the RNC in the course of its regularly conducted business activities.

[*2] **Background**

3. I attended college at Fairfield University and graduated in 1969. I then attended Georgetown University Law School and received a law degree in 1974. I am currently admitted to practice law in Texas.

4. My legal career has been focused heavily on the practice of federal and state election law, and I have developed substantial expertise in election law issues.

5. I first joined the Republican National Committee Counsel's Office in February 1992. As Chief Counsel, I am primarily responsible for the day-to-day legal operations of the RNC, including ensuring that all activities of the RNC, its officers, and its employees comply with applicable federal and state election laws.

6. In 1985, President Ronald Reagan appointed me to a six-year term as Commissioner on the Federal Election Commission ("FEC"). I served as the Chairman of the FEC in 1988, during the 1988 presidential election, and as Vice Chairman and Chairman of the Finance Committee in 1987.

7. From 1981 to 1985, prior to serving as an FEC Commissioner, I was Special Deputy to the Secretary of the United States Senate, in which position I represented the Secretary as a full-time, Ex-Officio Commissioner of the FEC.

8. From 1977 to 1980, I served as Counsel to the National Republican Congressional Committee, and served on the staff of Rep. Silvio Conte.

9. During the period from 1977 to 1979, I served at various times as Special Counsel to the Minority of the Committee on House Administration, where I assisted Republican members in proposing and amending election law legislation. During my tenure as a committee staff member, Congress passed the 1979 amendments to the Federal Election Campaign Act.

[*3] 10. The information contained in this declaration is based on the personal, non-privileged observations I have made while serving in the various positions I have described above; my review of the RNC's FEC reports, the documents which the RNC produced in connection with this litigation, and the RNC's designated exhibits; and the interviews I personally conducted with Jay Banning, Janice Knopp, Beverly Shea, Ann McCord, and others during my preparation to be the RNC's designated witness under Rule 30(b)(6). By submitting this declaration, I do not waive and do not intend to waive any attorney-client, work product, or any other privileges that may otherwise be available to my current or former employers, including the FEC and RNC.

Structure of the Republican Party

11. The Republican Party comprises several interacting, independent entities that work together on a daily basis to promote Republican ideals at the local, state, and federal levels, help elect candidates who espouse these ideals

at all levels, and govern after elections according to these ideals.

12. Established in the early 1850's, the Republican Party has grown to become one of the two major political parties in the United States. Throughout its history, tens of millions of Americans who believe in the Republican Party's ideals, and support the Republican Party's candidates at all levels of government, have affiliated themselves with the Republican Party.

13. One of the most visible parts of the Republican Party is the RNC. The RNC is an unincorporated political association created and governed by The Rules of the Republican Party ("Rules"), as adopted on July 31, 2000 by the Republican National Convention in Philadelphia, Pennsylvania. See RNC Exhibit 1, attached as Attachment A hereto. The RNC **[*4]** will be governed by these rules until the 2004 Republican National Convention. The Rules are reviewed, revised, and adopted at each quadrennial convention.

14. The RNC has held a national convention every 4 years since 1856. The purpose of these conventions is to adopt party rules; discuss, debate and adopt a platform of policy issues; nominate presidential and vice presidential candidates; rally Republican supporters; and promote the Republican message. A copy of the Republican Platform, as adopted on August 31, 2000 by the delegates to the 2000 Republican National Convention is RNC Exhibit 862, attached as Attachment B hereto.

15. The RNC is a federation of state and territorial Republican parties and currently has 165 members. As indicated in the Rules, the RNC's membership consists of one national committeeman and one national committeewoman from each of the 50 states, the District of Columbia, Puerto

Rico, the U.S. Virgin Islands, Guam, and American Samoa. The state and territorial Party chairmen also serve as members of the RNC.

16. The RNC's officers, consisting of a chairman and co-chairman, eight vice chairmen, and a secretary, treasurer, and other officers that the RNC may deem necessary, are elected by the 165 members of the RNC. Accordingly, each state has an equal say in choosing the leadership of the RNC.

17. The Chief Counsel position, in which I currently serve, is appointed by the chairman of the RNC.

18. Although the numbers vary at different points in the election cycle, the RNC currently employs 378 individuals. In addition, the RNC relies on thousands of dedicated volunteers for assistance with important party building activities across the country and relies on the generous contributions of millions of Americans each year. The average amount of these **[*5]** contributions is relatively small. Between 1993 and 2002, the average donation to the RNC was approximately $57.00.

19. The RNC's national focus should not be misunderstood as a federal focus. Rather, given the RNC's state-based structure, it is not surprising that the RNC actually focuses many of its resources on purely state and local election activity. This frequently involves devoting significant resources to grassroots activities, some of which exclusively benefit state and local candidates.

20. Although the national structure of the Republican Party starts with the RNC, each state has its own Republican State Committee with a Chairman and staff. The RNC works hand-in-hand with these state committees, each of which is a private political association operating under its own bylaws and direction. Although primarily focused on the

promotion of Republican issues at the state and local levels and the election of state and local Republican candidates, these state committees also work closely with the RNC, the National Republican Senatorial Committee, and the National Republican Congressional Committee to help elect candidates for federal office.

21. In addition to the RNC and state parties, the Republican Party also includes numerous local party committees. For example, the Dallas County (Iowa) Republican County Central Committee, a co-plaintiff in this litigation, is independent of the RNC and Iowa Republican Party. This committee, which is actively involved in supporting candidates for office in Iowa and promoting its issue agenda, is not treated as a "political committee" under the FECA because it does not raise or spend $1,000 per cycle on activities influencing federal elections. See 11 C.F.R. 100.5.

[*6] **Goals of the Republican Party**

22. The Republican Party has a long and rich history advocating some core principles: a smaller federal government, lower taxes, individual freedom, and a strong national defense. The RNC achieves these principles through three primary means: (1) promoting an issue agenda advocating Republican positions on issues of local, state, regional, national and international importance; (2) electing candidates who espouse these views to local, state and national offices; and (3) governing in accord with these views. Although these efforts sometimes overlap, they also frequently occur independently of one another. Accordingly, as discussed in greater detail below, the RNC often seeks to promote Republican positions on important issues, even in contexts outside of elections.

23. In accomplishing its objectives, the RNC pays for its activities in a manner consistent with the FEC's allocation regulations. Since the FEC has long recognized that the RNC is heavily involved in activities at the federal and state levels, the RNC has historically paid for its overhead using an allocation, or "split," between federal and nonfederal funds: activities that are purely federal are paid for with 100% federal funds; activities that are purely state or local are paid for with 100% nonfederal funds; and activities that relate to both federal and state elections are paid for with a combination of federal and nonfederal funds. The split between federal and nonfederal funds varies depending on whether it is a presidential election year. During non-presidential election years, the RNC is required to pay for these expenses with no less than 60% federal funds. This percentage increases to 65% during presidential election years. Accordingly, even though the vast majority of the candidates on the ballot in any given year are for state and local offices, the RNC must pay at least 60% of its expenses using federal funds, according to the FEC regulations currently in effect.

[*7]Coordination Between the RNC and State Parties on Electoral Issues

24. Throughout its history, the RNC has worked closely with state and local parties on electoral activity. This coordination occurs regardless of whether any federal candidates appear on the ballot.

RNC's Victory Program

25. Nothing better exemplifies the close working relationship between the various components of the Republican Party than the Victory Plans and Programs that are crafted and implemented every year on a collaborative basis.

26. During the past several election cycles, the RNC, in close collaboration with the state parties, has engaged in an effort known as the "Victory Program," a state-by-state full-ticket effort involving voter registration, voter identification, get-out-the-vote, generic advertising, and other grassroots activities undertaken by state parties with the active assistance and involvement of the RNC. By providing its expertise, guidance, partial funding, and fundraising ability, the RNC, in collaboration with the various state Republican parties, has successfully used this program to stimulate grassroots activism and increase voter turnout throughout the country. These Victory Programs contain local, state, and federal components and are designed to benefit candidates at all three levels.

27. The state Republican parties' Victory Programs during the 2000 election cycle were generally called "Victory 2000." Working hand-in-hand, the RNC and state parties used Victory 2000 as a highly effective tool for promoting grassroots activity and increasing voter turnout.

28. Victory 2000 was the result of extensive and continuous collaboration between the RNC and the state parties. Recognizing that each state has unique needs and that a **[*8]** Victory Program that works well in one state may not work well in another, the RNC assisted the state parties in developing and implementing programs tailored to the particular needs of each state.

29. This collaborative effort began when the RNC asked the various state parties to develop a Victory Plan consisting of a combination of the grassroots and get-out-the-vote activities that each believed would be the most effective for their particular state. Over the course of several months, each state party then developed a Victory Plan for addressing voter registration, voter identification, absent ballot initiatives, direct mail programs, and other grassroots activities. The

RNC's field personnel were often consulted by the state parties at this stage of the planning process.

30. Next, the RNC conducted regional meetings where representatives from the RNC met individually with each state party to review and discuss their Victory Plans. During these meetings, the RNC listened to the needs of the state parties, provided advice where appropriate, and helped revise each of the states' proposals. For example, a memorandum from the RNC to the political director of the North Carolina Republican Party providing feedback and suggestions on North Carolina's Victory 2000 Plan is RNC Exhibit 918, attached as Attachment C hereto. By working closely together, the end result was a Victory Program for each state that was designed to benefit candidates at all levels of the ticket.

31. The funding for Victory 2000 was shared between the RNC and the state parties. After developing an appropriate Victory Plan, the RNC and state parties worked together to develop a budget and set fundraising goals. These fundraising goals varied significantly depending on the state. For example, in a limited number of states, particularly those that raise large amounts of nonfederal money, the state party was able to pay for a **[*9]** significant portion of the program. In contrast, other states that do not raise as much nonfederal funds could not commit to raising the funds needed to pay for the program. Because the RNC believed these programs were important, it committed to sharing the funding with the state parties. In total, the RNC transferred approximately $42 million strictly for grassroots and get-out-the-vote activities to supplement the state parties' fundraising. This $42 million does not include broadcast issue advertising. Because of the FEC's state allocation formulas, approximately 60% of this total was nonfederal money.

32. In the end, by working closely together, sharing their expertise, and sharing the costs, the RNC and state parties were able to design, fund, and implement Victory Programs containing extensive grassroots and get-out-the-vote initiatives that were unique to the needs of each state and designed to benefit candidates at all levels of the ticket.

33. Although generally similar in scope, the Victory Plan for each state varied depending on the needs and characteristics of the state. Three examples of these plans are those implemented in California, Missouri, and New Mexico.

34. The California Victory 2000 Plan was "designed to assist all Republican candidates on the November 7, 2000 ballot." A copy of this plan is RNC Exhibit 762, attached as Attachment D hereto. This plan was developed, funded and implemented through close collaboration between the RNC and the California Republican Party. The Plan states that it was "designed to utilize the core pillars of modern direct voter contact: voter registration, absentee ballots, get-out-the-vote, non-allocable mail and voter file development and access." Each of these programs, as well as several others that were part of the California Victory 2000 Plan, are described in detail in Attachment D.

[*10] 35. The total expected operating budget for the California Victory 2000 Plan was $23,735,100. The RNC contributed approximately $8.3 million of this total for certain of the state party's activities as allowed by law. Of this amount, approximately $2.5 million was federal money and approximately $5.8 million was nonfederal money. The allocation between federal and nonfederal money was determined based on the percentage of federal candidates on the ballot, among other factors.

36. The Missouri Victory 2000 Campaign Plan was designed to accomplish three fundamental objectives: (1) "To

maximize GOP turnout in base Republican areas that will produce winning margins sufficient to produce state-wide Republican victories for president, governor and U.S. Senate"; (2) "To identify, persuade and turn out voters in key 'swing' precincts where voters choose candidates regardless of partisan labels"; and (3) "To fully integrate, for the first time ever, all aspects of successful grassroots activity by capturing the output of volunteer efforts in [the Missouri Republican Party's] database along with the output of paid services." A copy of the Missouri Victory Plan is RNC Exhibit 770, attached as Attachment E hereto. As indicated in the Missouri Victory 2000 Campaign Plan, the Missouri Republican Party, working together with the RNC, sought to accomplish these objectives through a combination of voter identification and voter registration activities, absentee ballot initiatives, direct mail (including slate mail and issue advocacy mail), get-out-the-vote activities, collateral materials (including bumper stickers, label stickers, and yard signs), and direct and in-kind support for the candidates.

37. The RNC contributed approximately $5.7 million to the Missouri Victory 2000 Program for certain of those programs as allowed by law. Of this amount, approximately $1.5 million was federal money and approximately $4.2 million was nonfederal money.

[*11] 38. The New Mexico Victory 2000 Plan was also the product of significant collaboration between the RNC and the New Mexico Republican Party. A draft of this plan is RNC Exhibit 2306, attached as Attachment F hereto. This plan consisted of voter registration and voter identification activities, an absentee ballot initiative, and get-out-the-vote mailings and telephone calls.

39. The RNC contributed approximately $1.5 million to the New Mexico Victory 2000 Program for certain of the state's programs as allowed by law. Of the total

amount, approximately $500,000 was federal money and approximately $1.0 million was nonfederal money.

40. As discussed above, the activities included in the Victory Programs have historically been paid for using a combination of federal and nonfederal funds, with the percentage of each type of funds based on the ballot composition in each state and other factors. Under the BCRA, however, state parties will be forced to pay for these activities in federal election years with federal money or a combination of federal and "Levin money," all of which must be raised by the state party. If the RNC participates in the program by raising, transferring, spending or directing money, the entire program must be paid for with 100% federal money; and no Levin money. Thus, there is a strong disincentive for state parties to work with national parties on these important activities.

Electoral Activity When No Federal Candidates Appear on the Ballot

41. The close working relationship between the RNC and state and local parties with regard to state and local electoral activity is most apparent during odd-numbered years when several states and major cities hold elections with only state and local candidates on the ballot. These states include Kentucky, Louisiana, Mississippi, New Jersey, and Virginia. [*12] Among the major cities that hold mayoral elections during odd-numbered years are Los Angeles, New York City, Minneapolis, Indianapolis, and Houston. Absent a special election for a vacant federal office, no federal candidates appear on the ballots in these cities and states during the odd-numbered years. Yet, the RNC frequently devotes significant resources to these elections.

42. Using nonfederal funds raised consistent with applicable state law, the RNC, through the Republican

National State Elections Committee ("RNSEC"), frequently makes direct donations to state and local candidates, pays for the nonfederal share of the party committee's administrative and overhead costs, and pays for the nonfederal share of party building activities such as voter registration and get-out-the-vote efforts. Due to variations among the various states' election laws, RNSEC currently maintains 12 separate accounts for state and local election activity to assure compliance with each state's laws. These accounts are described in the Declaration of Jay Banning.

43. By providing money for rent, electricity, and other operating and administrative costs, the RNSEC's assistance is essential in literally keeping several of the state parties operating. In fact, without this assistance, I believe that some state parties would not be able to function at more than a nominal level.

44. The RNC also provides significant fundraising assistance to state and local candidates, as well as to the state and local parties. These efforts frequently include fundraising letters sent by RNC officers on behalf of state and local candidates. For example, in October 2001, Jack Oliver, the Deputy Chairman of the RNC, sent a fundraising letter on behalf of Brett Schundler's campaign for Governor of New Jersey. See RNC Exhibit 292, attached as Attachment G hereto. The RNC's officers also send fundraising letters on behalf of state and local parties. For example, in August 1993, Haley Barbour, then the chairman of the RNC, sent **[*13]** a fundraising letter on behalf of the New Jersey Republican Party. See RNC Exhibit 1766, attached as Attachment H hereto. Chairman Barbour sent a similar letter on behalf of George Allen's candidacy for Governor of Virginia in 1993. See RNC Exhibit 1762, attached as Attachment I hereto. The RNC generally does not receive or handle the money received in response to these solicitations; nor is the RNC necessarily informed about who contributes. It

is inconceivable to me that anyone could believe these direct mail fundraising solicitations for state and local candidates corrupt, or appear to corrupt, any federal (or state or local) officeholder. Yet, such solicitations will be a crime under the BCRA.

45. As permitted under state law, the RNC also assists state and local candidates through direct contributions. For example, during the Virginia 2001 elections, pursuant to Virginia state law, the RNC made approximately $4.0 million in contributions through RNSEC to state and local candidates. This total included, among others, direct contributions to the Early for Governor Campaign, the Katzen for Lieutenant Governor Campaign, and the Kilgore for Attorney General Campaign. The RNC also transferred approximately $1.8 million to the Republican Party of Virginia. The RNC's total spending in the 2001 Virginia elections was approximately $5.8 million.

46. The RNC, through RNSEC, made similar contributions during the New Jersey elections in 2001. This included approximately $451,200 in direct contributions to state and local candidates (including the Schundler for Governor Campaign) and transfers of approximately $72,000 to the Republican State Central Committee. The RNC also spent approximately $1,167,000 on independent expenditures and made approximately $2,489,104 in in-kind contributions. The RNC's total spending in the 2001 New Jersey elections was approximately $4.2 million.

[*14] 47. The RNC's involvement in the 2001 Virginia and New Jersey elections, however, extended far beyond direct contributions. In fact, the RNC played a significant role in organizing and supporting grassroots activities that were designed to increase Republican and unaffiliated voter participation in both states.

48. In New Jersey, for example, the RNC devoted significant resources to a grassroots program that included a strong absentee ballot initiative, voter identification program, get-out-the-vote mailings, get-out-the-vote telephone banks, and field programs. In addition to providing funding for these activities, the RNC, working closely with the New Jersey Republican Party, also was actively involved in developing and implementing these programs.

49. To achieve its goal of maximizing voter participation, the RNC funded a significant absentee ballot initiative during the 2001 New Jersey elections. This effort began in early October with a mailing to almost one million householders containing two absentee ballot applications and a slate card of the entire Republican ticket. These applications were pre-filled out and personalized for each election district. A copy of this mailing is RNC Exhibit 2291, attached as Attachment J hereto. Coinciding with the delivery of this first mailing, approximately 340,000 automated telephone calls were made to answering machines. The message left on the voters' answering machines notified them that an absentee ballot application had been sent and urged them to "take the time to make sure [their] vote is counted." A copy of the proposed script for these automated telephone calls is RNC Exhibit 533, attached as Attachment K hereto. The third component of the absentee ballot initiative consisted of an oversized postcard mailing sent to almost one million householders. This postcard, which was personalized and sent one week after the first mailing, reminded voters that they could participate in the general election by mail and urged them to return their absentee ballot **[*15]** applications. A copy of this mailing is RNC Exhibit 2289, attached as Attachment L hereto. In total, the RNC spent more than $523,000 on this absentee ballot initiative.

50. The RNC also funded get-out-the-vote efforts designed to maximize turnout among the Republican base and

unaffiliated voters. These efforts included two direct mailings (one sent to approximately 800,000 householders and the other to approximately 555,000 householders), three telephone calls (one of which occurred on election day), and door hangers that were delivered door-to-door by volunteers organized by the county Republican organizations. In total, the RNC spent approximately $500,000 on these get-out-the-vote efforts. A copy of one of these direct mailings is RNC Exhibit 534 and attached as Attachment M hereto.

51. The RNC's efforts in New Jersey during 2001 also included persuasion programs designed to reach out to key swing voters. These programs consisted of three separate direct mailings containing issue advocacy messages and follow-up telephone calls that were designed to reinforce the message delivered by the mailings. A copy of one of these mailings is RNC Exhibit 234, attached as Attachment N hereto.

52. The RNC's persuasion efforts during the 2001 New Jersey elections also included spending approximately $1.0 million on television advertising that touted the "GOP Tax Cutting Team."

53. In total, through RNSEC, the RNC spent approximately $1.6 million (excluding RNC salaries and overhead) on all of these efforts during the New Jersey 2001 election for the sole purpose of benefiting state and local candidates and promoting the Republican Party's issue agenda.

54. The RNC engaged in similar grassroots and get-out-the-vote efforts in Virginia during 2001. As in New Jersey, even though no federal candidates appeared on the **[*16]** November ballot (a special election occurred in June 2001 for a vacant congressional seat), the RNC believed it

could play an important role in Virginia by boosting grassroots activity and voter turnout throughout the state.

55. The RNC's grassroots and get-out-the-vote efforts in Virginia were extensive. For example, the RNC paid for polling for the Early campaign, made approximately 2,300,000 get-out-the-vote phone calls, sent approximately 1,950,000 get-out-the-vote mailings and 2,857,000 persuasion mail pieces, spent approximately $80,000 on radio advertisements, and placed numerous full-time staffers in the field (reaching a total of between 45 and 50 during the final days of the campaign) to assist the grassroots and get-out-the-vote efforts. Again, because no federal candidates appeared on the November 2001 ballot, this effort was designed entirely to benefit state and local candidates and promote the Republican Party's issue agenda.

56. In addition to New Jersey and Virginia, the RNC was also involved in elections in Louisiana and Mississippi during 2001. Through RNSEC, the RNC spent over $10 million in these four states even though no federal candidates appeared on the ballot in any of these states (other than the Virginia June 2001 special election).

57. Sometimes, states have special elections for state and local offices in odd-numbered years. This recently occurred in South Carolina, when by virtue of a retirement, an important state Senate seat was on the special election ballot in 2001. Pursuant to requests from the South Carolina Senate Republican Caucus, the RNC committed $35,000 of nonfederal funds to this election. If federal funds are required for these situations, the RNC may be much less favorably disposed to provide assistance to the candidates, and some states may prohibit use of federal funds for state election activities.

58. As indicated above, the RNC also frequently provides assistance to state and local parties in key mayoral races, even when no federal candidates appear on the ballot. This includes providing support for Republican mayoral candidates, either directly or through state Republican party organizations, in such cities as Los Angeles, Houston, Indianapolis, and Minneapolis, among others.

59. The RNC's activities during most odd-year elections in Kentucky, California, Mississippi, New York, New Jersey, and Virginia, and in the odd-year mayoral races, are critically important to the mission of the Republican Party, but have no effect on federal elections.

Electoral Activity When Federal Candidates Appear on the Ballot

60. Although the RNC's activities relating exclusively to state and local elections are most apparent in the 5 states and numerous localities with odd-year elections, the RNC engages in the very same activities during even-numbered years when federal candidates do appear on the same ballot. These elections are sometimes referred to as "mixed" elections. The RNC, of course, is actively involved in all these elections at the local, state, and national levels.

61. Some of the RNC's activity during these mixed elections continues to involve purely state and local activity. This activity includes making direct donations to state and local candidates, making direct donations to state parties for purely state and local activities, and providing fundraising assistance to state and local candidates and parties. For example, during 2000, the RNC (through RNSEC) donated approximately $5.6 million of nonfederal money to state and local candidates. In 2000, the RNC also transferred approximately $123.9 million to state and local parties, of which approximately $88.2 million was nonfederal funds.

62. In fact, even though federal, state, and local candidates appear together on the ballot, the RNC's deployment of resources is sometimes dictated by the state and local levels rather than the federal level. This is demonstrated by the fact that the RNC sometimes devotes significant resources towards states with competitive gubernatorial races even though the races for federal offices are less competitive. For example, during 2000, most observers believed (correctly, as it turned out) that Indiana was a safe state for George W. Bush. This state also lacked a competitive Senate race (Senator Lugar easily won reelection). Nevertheless, the RNC committed significant resources to the state in hopes of influencing the gubernatorial race. Similarly, California has a competitive gubernatorial race this year, but no Senate race. Even without a Senate race, the RNC has been heavily involved in the state to support the gubernatorial candidacy of Bill Simon.

RNC Involvement in State Party Fundraising

63. The RNC provides assistance with state party fundraising in two important ways: (1) transferring money directly to the state parties; and (2) assisting the state parties with various programs and efforts that allow them to raise money on their own.

64. The RNC transfers both federal and nonfederal money directly to the state parties for a variety of purposes. As discussed above, this includes nonfederal funds to assist in the implementation of a state party's Victory Program, as well as to assist with state and local races. The RNC also frequently transfers nonfederal money to the state parties. Many of the state parties are heavily dependent on these transfers to cover the costs of their operations, as discussed in the Declaration of Jay Banning. Many state parties do not have, and are unlikely to develop, the fundraising capability to

replace these transfers, as discussed in the Declaration of Beverly Shea.

[*19] 65. The RNC also goes to great lengths to assist the state parties in raising money on their own. Among the methods frequently used are donor list exchanges, fundraising events, facilitating contributions from interested donors to particular state parties, supporting fundraising activities through letters or appearances by RNC personnel, and providing matching incentives.

66. Donor lists are an important asset to any organization that seeks to raise money, because they enable the organization to direct its solicitations to those individuals who either have a history of making contributions or who have indicated a desire to do so. Over the years, the RNC and state parties have separately developed comprehensive donor lists. Accordingly, by exchanging these lists, the RNC and state parties are able to increase their prospective donor pools, thereby increasing their ability to raise money.

67. The RNC and state parties also frequently plan separate fundraising events in the same city, commonly referred to as "tiered fundraising events." As explained in the Declaration of Beverly Shea, "tiered" fundraising events typically involve two or three separate events occurring on a single date at locations in the same vicinity or city. Typical tiered events will consist of a large low-dollar event for federal donors to candidates in the first tier, a middle-tier "photo op" event with larger donors, and often a separate top-tier dinner for the event Host Committee. The proceeds of the large first-tier event typically go to a candidate for state office, the proceeds of the middle-tier "photo op" go to the state party, and the proceeds of the top-tier dinner go to the RNC. So-called "tiered" fundraising events such as these serve to benefit state parties because they are able to increase their fundraising success through direct association with the RNC.

In fact, without the RNC holding an event in the same city and on the same date as the state party event, it would likely be logistically and financially impossible for the state party to **[*20]** convince major-drawing surrogates to be the featured guest at their own event. Further, the RNC has a highly professional and experienced fundraising staff, which many state parties do not. Indeed, some state parties have no fundraising employees at all. Therefore, state parties necessarily benefit from the involvement of RNC personnel in tiered fundraising activities, both because RNC fundraising staffers are highly competent and because their involvement supplements the efforts of state party personnel.

68. It is also not uncommon for the RNC to put interested donors in touch with various state parties. This often occurs when a donor has reached his or her federal dollar limits to the RNC, but wishes to make additional contributions to state parties. When this happens, the RNC will often suggest that the donor make contributions to certain state parties that are most in need of funds at that time.

69. As explained above, RNC personnel frequently sign fundraising letters on behalf of state parties. An example of one of these letters is RNC Exhibit 1769, attached as Attachment O hereto. In addition to signing fundraising letters, RNC officers, including Chairman Marc Racicot, Co-Chairwoman Ann Wagner, and Deputy Chairman Jack Oliver, spend a significant amount of their time attending fundraisers across the country that benefit state and local parties and candidates. For example, Ann Wagner and Jack Oliver attended a fundraiser on behalf of the Missouri Republican Party in October 2001. A copy of the invitation to this event is RNC Exhibit 297, attached as Attachment P hereto. In September 2001, Ann Wagner was also the keynote speaker at a Shelby County Republican Women's Club fundraising dinner in Memphis, Tennessee. A thank you letter sent to

Chairwoman Wagner is RNC Exhibit 301, attached as Attachment Q hereto.

[*21] 70. Since becoming Chairman in January 2002, Governor Racicot has made 82 trips in which he visited a total of 67 cities in 36 states. Similarly, since January 2001, Ann Wagner and Jack Oliver have traveled to 31 and 33 states, respectively, in their capacities as RNC officers. The majority of these trips have had significant fundraising components to them.

71. Finally, the RNC has implemented matching incentive programs designed to benefit state and local parties and candidates. For example, during 2000, the RNC created the State Legislative Campaign Fund. The goal of this program was to improve the Republican's chances of regaining control of the state legislatures.

72. As part of the State Legislative Campaign Fund, the RNC approached 15 states and offered to match a percentage of the funds raised by the state party. By adding its credibility and fundraising expertise to this effort, the RNC was able to raise between $3.0 and $4.0 million for this program. All of this money benefited state candidates.

RNC Involvement in Redistricting

73. The RNC also has provided redistricting staff to the state parties. Although redistricting has an impact on federal elections, its impact on state and local elections is much more immediate and significant. In fact, as indicated in a letter from David Wilkins, the Speaker of the House in South Carolina, the RNC's assistance "has proven to be invaluable to the South Carolina Republican Party's efforts to expand [its] influence in state government." A copy of this letter is RNC Exhibit 2435, attached as Attachment R hereto.

74. The RNC's redistricting efforts also include litigating challenges to various redistricting plans throughout the country. During the 2000 election cycle, the RNC spent approximately $880,000 on redistricting efforts, including redistricting litigation. A substantial portion of this was nonfederal money, as allowed under current law. During 2002, **[*22]** the RNC has budgeted more than $3.0 million on redistricting litigation. Overall, the RNC spends more on state legislative redistricting than on congressional redistricting.

Impact of the BCRA on the RNC's Ability to Assist and Interrelate With State Parties

75. The BCRA will have a significant -- and highly detrimental -- impact on the RNC's ability to associate with and assist the state parties. The unfortunate result will be less interaction between the RNC and state parties, less sharing of expertise and resources, and significantly less resources devoted to core grassroots and get-out-the-vote activities that are crucial to increasing voter turnout.

76. As an initial matter, because the BCRA prohibits the RNC from raising, spending, or directing nonfederal money, the RNC may be banned from any state and local activities in certain states that prohibit the use of federal money in state and local election activity. In Connecticut, for example, state law requires national political parties to form a state-regulated political committee, and then raise money directly into that committee, in accordance with state law. Transfers of federally-regulated money into such a Connecticut-regulated political committee to benefit state and local candidates are prohibited by state law. Since the BCRA prohibits the RNC and other national political parties from raising non-federally-regulated funds, without a significant change in state or federal law, national parties may be precluded from participating in Connecticut state and local

campaigns. Similar issues may be presented in Massachusetts, North Carolina, and perhaps other states.

77. Moreover, in those states where the RNC can still spend money, any involvement by the RNC or its officers, staff, members, or any its "agents" in drafting and implementing Victory Plans might constitute "spending" or "directing" nonfederal funds (including Levin funds), and thus result in the "federalization" of the entire program. Therefore, **[*23]** state parties will face the prospect of being punished for simply associating with the RNC: these state parties will be forced to use 100% federal money to pay for programs they could otherwise pay for with a combination of federal and Levin money. Indeed, given the difficulty state parties face in raising large amounts of federal dollars, most states will be forced to significantly reduce -- or perhaps eliminate -- their grassroots and get-out-the-vote activities. Even with the increased federal contribution limits for state parties, competition for federal contributions within the $37,500 aggregate limit will make it extremely difficult for state parties to raise federal funds. As a result, these important activities will be left to unregulated outside interest groups, many of whom do not disclose any information about their donors.

78. This "federalization" may occur even in odd-numbered years when no federal candidates appear on the ballot. Thus, should the RNC's officers, members, or agents seek to assist a state party during an odd-numbered year when only state and local candidates appear on the ballot by advising the state party on how to allocate funds for these activities, the state party might be forced to pay for all of these programs with federal dollars. In effect, by punishing the state parties for associating with the RNC, the BCRA severely burdens the ability of the RNC and state parties to work together during even odd-year elections.

79. Moreover, the BCRA actually places greater limits on the RNC's ability to help state and local parties and candidates than it does with respect to federal candidates and officeholders. After all, the RNC cannot even raise nonfederal money up to the federal limit for these state and local parties and candidates. By contrast, the BCRA created two exceptions that allow federal officeholders to raise nonfederal money for the state and local candidates and parties, but neither exception applies to the national parties or their agents.

[*24] 80. The problem that this creates is particularly acute with respect to the various state party chairmen who also serve in executive roles at the RNC. For example, Ann Wagner, the Co-chairman of the RNC, is also the Chairwoman of the Missouri Republican Party. The BCRA makes it a crime for Ms. Wagner to solicit funds on behalf of the Missouri Republican Party, or for that matter any other state or local party or candidate.

81. The RNC is very concerned about the financial viability of several state parties that depend on the RNC for a large portion of their funding. The BCRA's prohibitions on the RNC's fundraising assistance to states, and RNC transfers of nonfederal funds, will have a debilitating effect on such parties as the Republican Party of Arkansas. Just this year, the RNC made a nonfederal transfer to the Arkansas party just to allow it to pay its current bills.

The RNC's Relationship With Other Republican Associations

82. The RNC works closely with several other organizations on a daily basis for the purpose of electing Republican candidates to state and local offices and promoting the Republican agenda. Among others, these organizations include the Republican Governors Association ("RGA"), the Republican Attorneys General Association ("RAGA"), and

the National Republican Legislators Association ("NRLA"). The BCRA will prohibit the RNC from working with these organizations.

83. Since its founding in 1963, the RGA has served as the official public policy and political organization of the Republican governors and governors-elect of the United States. In this role, the RGA has worked closely with the RNC to elect Republican gubernatorial candidates. Two examples of this close working relationship were the Virginia and New Jersey 2001 gubernatorial races, where the RNC and RGA joined efforts to support the candidacies of Mark Earley and Bret Schundler. Although the Republican gubernatorial candidates in these **[*25]** states were ultimately unsuccessful, the combined effort of the RNC and RGA played an important role in assisting other Republican candidates on the ballot.

84. The RAGA is modeled after the RGA and serves similar purposes: (1) assisting in the election and reelection of Republican candidates for the office of attorney general; and (2) facilitating communications among the Republican attorneys general, RGA, RNC, state and local parties, and other Republican elected officials. Since RAGA's establishment in 1999, the RNC has worked closely with the RAGA to accomplish its objectives. A memorandum providing an overview of the RAGA is RNC Exhibit 978, attached as Attachment S hereto.

85. The NRLA currently represents more than 3,500 Republican state legislators across the country and, with the RNC's support and assistance, has become an important part of the Republican Party.

86. The BCRA will have a significant impact on the RNC's ability to work and interact with Republican organizations such as the RGA, RAGA, and NRLA. The BCRA not only prohibits the RNC from helping these groups

raise state-regulated money, but also, by prohibiting the RNC from soliciting, receiving, or directing nonfederal money to any such entity, the BCRA effectively precludes the RNC's involvement with these organizations.

RNC Issue Advocacy

87. The Republican Platform, established by the delegates at each quadrennial convention, describes the positions the Republican Party espouses on many of the critical issues facing the Nation. In remarkable detail, the Platform outlines the Party's goals for local, state, and federal legislative and regulatory policy. Although individual Republican candidates **[*26]** sometimes disagree with the Party's platform on particular issues, the Platform nevertheless remains the Party's guiding statement.

88. The RNC devotes substantial resources annually to advocating its positions on these issues. This includes significant efforts to communicate with RNC members and the general public through a variety of means, including direct mail, press releases, e-mail, and broadcast advertisements.

89. The RNC airs many public communications that expressly advocate the election or defeat of clearly identified federal candidates and pays for all of these "express advocacy" communications with 100% federal money. The RNC also airs other public communications that do not expressly advocate the election of defeat of any clearly identified federal candidates. These "issue advertisements" are, by FEC precedent, funded with a split of federal and non-federal money. Although not required by law, as a matter of policy, the broadcast issue advocacy efforts undertaken by the RNC do not mention any election; in all or virtually all instances, they also avoid referring to any individual as a candidate.

90. Proponents of the BCRA have suggested that the primary use of nonfederal funds by national party committees is for so-called "electioneering" broadcast advertisements, by which they mean candidate-specific broadcast advertising aired within 60 days of a general and 30 days of a primary election, but which does not expressly advocate the election or defeat of a clearly identified federal candidate. This suggestion is inaccurate for two reasons. First, in recent election cycles, less than half of the RNC's nonfederal funds have been used for broadcast issue advocacy efforts; therefore, only a relatively small subset has constituted "electioneering" broadcast advertisements as that term is used in the BCRA. Second, although the RNC does, like interest groups, air broadcast issue advertisements that mention federal **[*27]** candidates close to elections, it also engages in non-candidate issue advocacy and party building communications. And it should not be overlooked that, unlike interest groups, the RNC is required under current law to pay for all of its issue advertising with a significant portion of federal money.

91. There are instances in which the RNC pays for broadcast issue advertising for the exclusive purpose of influencing the legislative and policy debate.

(a) One area in which the RNC was particularly active with broadcast issue advertisements was the debate over a constitutional amendment that would have required the federal government to have a balanced budget ("Balanced Budget Amendment"). In February 1995, the RNC determined that it could make an important difference in this debate. The RNC's goal was to garner additional support for the amendment, an issue of great importance to many Republicans throughout the country. Accordingly, and even though the closest federal election was over 20 months away, the RNC decided to fund a major broadcast advertising campaign. The RNC ran these advertisements to encourage

particular Senators to support the amendment, regardless of whether those Senators were up for reelection 20 months later. For example, one key Senator who expressed opposition to the amendment, but who was considered persuadable, was New Mexico's Jeff Bingaman. As described in a letter Senator Bingaman sent to the RNC on March 3, 1995, the RNC funded advertisements in New Mexico in early 1995 specifically to call attention to this issue. See RNC Exhibit 1711, attached as Attachment T hereto. Given that Senator Bingaman had been reelected to the Senate in 1994 and would not be up for reelection for another 5 years, the RNC's decision to run advertisements in New Mexico was clearly designed to promote the Republican Party's stance on this issue and to influence the public debate.

[*28] (b) The RNC continued to run broadcast issue advocacy -- including additional 30-second spots and a feature-length GOP-TV program described in greater detail below -- throughout 1995 and the beginning of 1996 for the purpose of communicating its views on the balanced budget issue. A copy of one of these advertisements is RNC Exhibit 2438, attached as Attachment U hereto.

(c) In fact, in May 1996, the RNC produced and aired one of the most memorable and effective broadcast advertisements in its history, again in the context of the continuing public debate on the balanced budget. The purpose of this advertisement was to communicate the Republican Party's position that the federal government must control its reckless appetite for deficit spending. This particular advertisement featured President Clinton, and included numerous clips of him stating a different number of years in which he would balance the budget. The advertisement explained, "Talk is cheap. Double talk is expensive. Tell Mr. Clinton to support the Balanced Budget Amendment." A copy of this advertisement is RNC Exhibit

2439, attached as Attachment V hereto. Eventually, President Clinton signed a balanced budget resolution.

(d) Later in the summer of 1996, when the legislative agenda and accompanying public debate turned to welfare reform, the RNC again effectively communicated its views through broadcast issue advertising for the purpose of putting pressure on President Clinton to sign welfare reform legislation. Beginning in late May 1996, the RNC aired advertisements comparing President Clinton's rhetoric on welfare reform with his record on welfare reform. A copy of this advertisement is RNC Exhibit 2440, attached as Attachment W hereto. The advertising campaign was successful and culminated in President Clinton finally signing a welfare reform bill into law after he vetoed the bill twice. The RNC would like to **[*29]** believe that its issue advocacy campaign played a role in President Clinton's decision to ultimately sign this legislation into law.

(e) In addition to its efforts to influence the legislative debate, the RNC also seeks to educate the public about the positions for which the Republican Party stands. The balanced budget amendment advertisements are examples of these efforts. Another example is the advertising campaign the RNC is currently running nationwide in support of the Republican education agenda. The RNC is currently airing a 60-second radio spot entitled "Leave No Child Behind." The script of this advertisement is RNC Exhibit 2428, attached as Attachment X hereto. This advertisement, which features a man and a woman discussing education issues, concludes with the following exchange:

Male:	Republicans are working for better, safer schools...
Female:	... so no child is left behind.
Male:	That's right ... Republicans.

The advertisement mentions President Bush's name for the purpose of identifying the precise proposal supported by the Republican Party ("President Bush's No Child Left Behind Law"), but mentions no federal candidate currently facing reelection. It concludes with a request that listeners call a toll-free number to learn more about Republican education reform.

92. Many of the RNC's broadcast issue advertisements are run in response to, or in anticipation of, "attack" advertisements paid for by special interest groups using unregulated and undisclosed funds. The RNC's ability to respond to these advertisements is critical in ensuring a full and accurate debate on the issues. In 1998, for example, the RNC funded a portion of a multi-million dollar issue advocacy campaign announced by the NRCC called "Operation Breakout." The express purpose and intent of Operation Breakout was to **[*30]** respond to an anticipated blitz of labor union and other interest group broadcast issue advertisements attacking Republican Congressional candidates.

93. Many of the RNC's broadcast issue advocacy efforts are primarily directed to media markets in which the RNC believes the public is most attuned to the particular issues the RNC intends to address with each advertisement. Often, these broadcast issue advocacy efforts are directed to media markets in which a competitive federal election campaign is ongoing. In those specific instances, the RNC believes that the public is closely following the issues which divide the candidates, and that advertising promoting certain of the messages espoused by the Republican Party will receive more attention and discussion than they might during times when no election is pending.

94. The RNC also communicates its message through GOP-TV, which is essentially the RNC's television studio. As part of GOP-TV, the RNC produces feature-length video programming that it subsequently airs on cable

television nationwide. Many of the GOP-TV programs are designed as simulated news broadcasts: a GOP-TV anchor interviews officeholders, RNC staff, and members of the public -- often several of whom are admittedly not Republicans -- about various important issues and the Republican Party's proposals for addressing them. One relatively recent program addressed education and tax reform. See RNC Exhibit 334B, attached as Attachment Y hereto.

95. Party building is another important goal of GOP-TV, and an important mission of the GOP-TV effort is to define the Republican Party as a "big-tent" party that is especially eager to recruit women and minorities who traditionally may not have identified with the Party. One recent GOP-TV program featured prominent Republican leaders J.C. Watts, Elaine Chao, and Ileana Ros-Lehtinen in an effort to reach out to minority communities that do **[*31]** not traditionally associate themselves with the Republican Party. See RNC Exhibit 1910, attached as Attachment Z. Another particularly effective production highlighted the role of Republican women in the current Administration, again with the message that the Republican Party welcomes the participation and leadership of women. See RNC Exhibit 334A, attached as Attachment AA.

96. The GOP-TV program is funded in part with non-federal dollars and is an integral part of the RNC's party building and education campaigns that could not be effectively undertaken without the use of such funds.

97. Many of the issue advocacy and party building programs I have described are duplicated on the RNC's state-of-the-art website, located at www.rnc.org. Paid for in part with non-federal funds, the website provides access to press releases, GOP-TV videos, talking points, biographies of selected Republican leaders, and many other features designed

to disseminate the Party's views to the world and to allow a broader understanding of those views.

98. The RNC also engages in significant non-broadcast communications with the public. For example, the RNC ran an advertisements in Reader's Digest magazine in 1994 to promote the Contract with America. A copy of this advertisement is RNC Exhibit 1760, attached as Attachment BB hereto.

99. The RNC's non-broadcast communications also include, among others, the magazine Rising Tide, which is distributed to anyone who contributes at least $25 per year to the RNC. Rising Tide is designed to provide readers with a more in-depth education about the Republican issue agenda than is possible in the more traditional 30-second television advertisements. A copy of Rising Tide is RNC Exhibit 977, attached as Attachment CC hereto. The RNC also communicates its message through its eChampions program, which allows anyone **[*32]** who is interested to sign up on the RNC's website to receive frequent e-mails from the RNC. One e-mail program, called "The Weekly Team Leader," provides timely updates about issues of importance to RNC members. Examples of recent The Weekly Team Leader e-mails are RNC Exhibits 2425 & 2426, attached as Attachments DD & EE.

100. Finally, in addition to the RNC efforts to educate its members and the public, the RNC also seeks to educate Republican officeholders at all levels of government. For example, the RNC recently committed substantial resources to educate Republican officeholders about the expected effects of the BCRA. As part of these efforts, the RNC advocated against the passage of this legislation. I understand that allegations have been made that the Republican Party had threatened to cut-off contributions to Republicans who voted in favor of this legislation. No such

threat was made to the best of my knowledge. It is a fact that, at this very moment, the Republican party committees have committed to provide the maximum amount of coordinated expenditures in certain House races in which a Republican who voted for the BCRA is facing stiff competition. Coordinated spending is being allocated today, as it always has been, based on the competitiveness of the races, not on the basis of this or any other legislative votes.

101. The RNC believes its ability to communicate to its members and the public -- whether though broadcast issue advertisements or any of the other discussed above -- is an important part of its mission. By prohibiting the raising and spending of nonfederal funds, the BCRA will significantly reduce the amount of resources available for issue advocacy. As a result, the BCRA will result in less advocacy about issues of importance to the public.

[*33] I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

s/
Thomas Josefiak

Executed on October 4, 2002

[EXHIBITS OMITTED]

REBUTTAL DECLARATION OF THOMAS JOSEFIAK

I, Thomas Josefiak, hereby swear and depose as follows, based on my own personal knowledge:

1. I am submitting this declaration in rebuttal to the witness statements served by the Department of Justice, Federal Election Commission, and Defendant-Intervenors (collectively, "Defendants").

The BCRA's Coordinated Spending Provisions

2. Senator McCain makes the assertion that "[t]he idea that a party could make both 'coordinated' and 'independent' expenditures once the party has nominated a candidate, is not sensible." Declaration of Senator John McCain ¶ 23. Although this appears to **[*2]** be Senator McCain's justification for the BCRA's coordinated spending provisions, this assertion is both unsupported and untrue. Senator McCain also fails to acknowledge the virtually unworkable situation created by the BCRA's requirement that political party committees choose between coordinating their political activities with their federal candidates and engaging in independent expenditures in support of their federal candidates.

3. As a practical matter, the BCRA requires all political party committees to make a collective choice between independent expenditures and coordinated expenditures, a choice to which all of the committees of a party will be irrevocably bound. In addition to being impractical, I also believe this requirement is an attempt by the supporters of the BCRA to take away the political parties' right to engage in unlimited independent expenditures.

4. Based on my experience, I believe that it will be extraordinarily difficult, if not impossible, for a national

party to police every party entity -- including "all political committees established and maintained by" a national or state political party -- to make sure that none of them have made or are about to make a coordinated or independent expenditure. For example, if the RNC decides to make a coordinated expenditure with respect to a candidate, the RNC must somehow first confirm that no other political committee has or is about to make an independent expenditure with respect to the same candidate. Also, by expanding the definition of "coordination" so as to require something less than agreement or formal collaboration, the BCRA may even make it so that the very act of policing by the national parties could itself preclude independent expenditures.

5. Such a result places the political parties in an untenable position: the BCRA essentially requires the political parties to forego future coordinated expenditures as the "price" for engaging in independent expenditures. Accordingly, the BCRA may have the result **[*3]** of effectively precluding the RNC from engaging in this form of constitutionally-protected political activity. At a minimum, the expanded definition of coordination will further hinder the ability of the RNC to work closely with the subordinate parties and candidates.

6. Although I do not believe it is possible for the RNC to know of every example of other Republican Party committees making independent expenditures when the RNC has made or is making coordinated expenditures, two examples come to mind. First, in 1996, following the Supreme Court's ruling in Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996), that political parties have a constitutionally protected right to make unlimited independent expenditures, the National Republican Senatorial Committee ("NRSC") made independent expenditures on behalf of several candidates for the United States Senate, while the RNC was simultaneously making

coordinated expenditures on behalf of those same candidates. In total, the NRSC made approximately $10.5 million in independent expenditures in 17 states where the RNC was making coordinated expenditures: Alabama, Arkansas, Colorado, Georgia, Iowa, Kansas, Louisiana, Maine, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, Rhode Island, South Dakota, and Wyoming. The RNC made more than $4.3 million of coordinated expenditures in these states. As part of its efforts, the NRSC took extraordinary measures to assure no coordination, including moving the staff working on the independent expenditures out of the NRSC's office building.

7. Second, it is my understanding that the Republican Party of Michigan has made independent expenditures on behalf of federal candidates with some regularity, including during periods when other Republican party committees were making coordinated expenditures. For example, during 2000, the Republican Party of Michigan made approximately $191,000 in [*4] independent expenditures and the RNC made approximately $998,000 in coordinated expenditures in Michigan.

The BCRA's Millionaire's Provision

8. Similarly, the Defendants' witnesses also fail to address the difficulty imposed upon the political parties by the so-called "Millionaire's Provision," which increases contribution limits, and eliminates any limits on party coordinated expenditures, for the campaigns of candidates for the Senate or House whenever they confront opponents who devote specified amounts of personal wealth to their own campaigns.

9. Under the Millionaire's Provision, the RNC will be put in the position of providing different levels of funding for Republican candidates depending on whether or

not the Republican candidates or their opponents decide to commit $150,000 of their personal funds to the campaign. In some situations, the RNC will be unable to make unlimited coordinated expenditures on behalf of candidates who legally use their own resources to support their campaigns, while their opponents can receive unlimited coordinated spending by their political parties. In other situations, the RNC will be able to spend unlimited amounts in coordination with some of its candidates who are running against wealthy opponents who devote more than $150,000 of their personal resources to their campaigns, but will be prohibited from spending unlimited amounts in coordination with other candidates are not running against wealthy opponents. Therefore, the RNC's ability to provide funding to a Republican candidate will, in some cases, be dictated more by the decisions of the Republican candidate's opponent than by the RNC.

10. I believe that the Millionaire's Provision also serves to demonstrate that the true congressional interest in imposing the coordinated expenditure limit is to limit spending, [*5] not to prevent corruption. After all, at least with regards to the Millionaire's Provision, Congress appears to not be concerned that allowing larger contributions and greater funding from the political parties to candidates will corrupt those candidates.

Viability of State Parties

11. Several of the Defendants' witnesses suggest that parties will be strengthened by the BCRA. These witnesses fail to recognize, however, that the BCRA's various restrictions on national party transfers of nonfederal money to state parties, fundraising assistance by national parties and federal officeholders to state parties, and limitations by way of the Levin Amendment on the amount of state-regulated money state parties may accept from contributors will severely harm the state parties, and jeopardize the viability of

several. For example, in the 2000 election cycle, the Republican Party of Wisconsin received 64% of its funding by way of transfers from the RNC; the Republican Party of Oregon received 77% of its funding by way of transfers from the RNC.

RNC Financial Support of Members Who Voted For the BCRA

12. In Senator McCain's affidavit, he states: "At times, when Members seek to support legislation their congressional leaders oppose, they are threatened with the prospect that their leaders will withhold soft money being spent on their behalf." Declaration of Senator John McCain ¶ 7. As previously indicated, I am aware of no instance in which a Member has been so threatened. Moreover, the objective facts demonstrate that campaign funding is not withheld from Members of Congress or Senators, even in situations, like the BCRA, when Members vote contrary to the suggestions of the party. In fact, the RNC has or will soon spend the maximum amount of coordinated expenditures on behalf of Congresspersons Bass, Capito, Johnson, Leach, Morella, and Simmons, and also on behalf of Congressmen Thune, Ganske, and **[*6]** Graham, who are running for the Senate. Each of these Members voted in favor of the BCRA. It is my understanding that the NRCC has already made substantial direct contributions to many of these candidates as well. Senator Collins, who voted for the BCRA, is also receiving coordinated expenditures.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

s/
Thomas Josefiak

Executed on October 7, 2002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 02-582 (CKK, KLH, RJL)
Consolidated Actions

SENATOR MITCH McCONNELL, et at.,
Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, et al.,
Defendants.

DIRECT TRIAL TESTIMONY OF R. BRUCE JOSTEN

1. My name is R. Bruce Josten. I am Executive Vice President for Government Affairs of the Chamber of Commerce of the United States ("Chamber"), a position I have held since 1994. I have been with the Chamber since 1974.

2. My position gives me supervisory responsibility for the government affairs activities of the Chamber. I also participate directly in those activities. Our mission is to represent the American business community before the federal legislative and executive branches of government.

3. The Chamber is the world's largest not-for-profit business federation. Founded in 1912, the Chamber represents over 3,000,000 businesses and business associations. The Chamber is a corporation, as are many of its members and contributors. It is exempt from taxation under Section 501(c)(6) of the Internal Revenue Code.

4. To advance the interests of its members, the Chamber must and does regularly consult with Members of Congress, officers of the Executive Branch, and others, including political party officials and current or likely candidates for election to Federal office. At the same time, the Chamber must consult and work with a wide variety of other politically active organizations. Depending on the issue, the groups we work with may range from other business associations to national labor organizations to citizen groups organized around specific policy views or objectives.

5. In building and maintaining support for the Chamber's legislative and policy agenda, we need to be able to communicate our views to the public. To that end, the Chamber regularly produces and purchases television, radio, cable, and other public communications on matters of interest to the public. Sometimes the Chamber sponsors these communications directly in its own name. For example, in 1999 the Chamber ran ads relating to Y2K, and the Chamber's

president, Tom Donohue, has delivered a series of radio talks entitled "Speaking of Business." Sometimes the Chamber contributes to groups or coalitions of like minded organizations and persons that take responsibility for preparing and airing the communications. For example, in March, 2000, the Chamber helped support ads by American Business for Legal Immigration and in December, 2001, the Chamber supported ads by People for Common Sense Courts that urged Senator Daschle to schedule a Senate vote on Eugene Scalia's nomination as Solicitor of Labor.

6. Not surprisingly, since these communications are intended to advance the Chamber's objectives, they may well address issues that the Chamber has discussed with the persons and groups with which it regularly cooperates,

including Members of Congress and representatives of political parties, as well as various cooperating organizations of all types.

7. Because we are a democracy, many of the Members of Congress with whom we work are or soon will be candidates for reelection. Members of the House, of course, run every two years. One third of the Senate runs each two years. Also, there are periodic special elections. As one would expect, the policy views and political activities of such candidates often are the subject of public discussion during such campaigns.

8. The Chamber and many other groups with which it cooperates with respect to legislative and public policy were the subject of a complaint filed with the Federal Election Commission. It alleged that so-called issue advertisements (advertisements that did not expressly advocate the election or defeat of a candidate) that the Chamber helped sponsor in 1996 through a group known as "The Coalition" were coordinated with federal candidates, campaigns, or political committees and, hence, were subject to federal campaign finance regulation and an improper use of corporate funds. In fact, the Chamber and the Coalition had gone to great lengths to assure that no coordination occurred, but nevertheless they were subjected to years of intrusive, burdensome, and very expensive proceedings before the FEC dismissed the complaint. In my judgment that experience discouraged many participants in The Coalition from further similar efforts and public communication.

9. The events underlying the complaint against the Coalition, as reported in the press, illustrate the types of contacts that groups such as the Chamber necessarily have with candidates or persons associated with candidates. The charges of coordination were based on several things, all of which are entirely innocent and necessary. First, Congressman Boehner reportedly gave speeches saying that the business community should mount some response to the

$35 million dollar anti-business advertising campaign that the AFL-CIO had announced. Although the need to respond to the AFL-CIO was obvious to us all, those reported speeches were said to amount to suggestions that we run ads. Second, the Chamber and other active members of The Coalition also were participants in something called the Thursday Group that Congressman Boehner had organized to promote the pro-business legislative aspects of The Contract With America. The overlap in membership between the two groups and the contact with Congressman Boehner was said to indicate coordination, though in fact no ads were discussed with the Thursday Group until after they had run, and then only briefly. Third, it was alleged that some of our vendors who assisted in planning, developing, and placing our advertisements also were doing work for one or more candidates. This overlap was said to show coordination.

COC 0002

[2]

10. As the experience of The Coalition demonstrates, it is essential to have a clear, objective, bright-line test for coordination. Otherwise, groups like the Chamber face serious risks every time they support public communications, either directly or through groups of like-minded organizations or individuals. The risks arise in several ways. First, statements by candidates or their agents may be characterized as suggesting the speech. Second, discussions of issues with legislators may be deemed to coordinate message content. Third, meetings with legislators whose policy views are consistent with the communications may lead to inferences of coordination. Fourth, hiring vendors whose skill also makes them attractive to candidates or campaigns may be claimed to suggest coordination. And so on.

11. The Chamber could not avoid the risks posed by a vague or overbroad coordination standard by limiting the

contacts that its representatives have with legislators and political parties. So long as the Chamber is to work with other groups, as it did in The Coalition and as it often does, it runs the risk that activities by others will be claimed to convert the entire effort into coordinated speech. At minimum, the coordination standard must be both clear enough and narrow enough that the Chamber can have reasonable confidence that the representatives of groups with which the Chamber works can both understand the standard and reasonably be expected to comply with it. A coordination standard that required an actual agreement with a candidate or campaign as to the content or placement of issue advertising would work, although even such a standard will cause some chill.

12. For obvious reasons, Members of Congress often seek to attach their names to legislation that they sponsor. These designations become how the legislation is known in public discourse. A recent and obvious example is the recent campaign finance legislation, which in various permutations was known as McCain/Feingold or Shays/Meehan.

13. An important reason to run issue ads in the home district or state of Members of Congress can be to get the Members' attention, make them think about how their constituents are likely to feel about his legislative and policy positions, and either encourage or discourage those activities. To achieve those objectives, it often is important for an issue ad to use a Member's name. Moreover, because both Members and the public are most focused on political issues at election time, it is important for such ads to be run near the election.

14. Legislative efforts can extend for many years. At times during such an effort it may be very important to run public advertising at the time that a committee or chamber of Congress is about to vote. But issue ads also may play a longer-range purpose, building for the future. It may be important, however, for such long-range ads to take

advantage of recent events. For example, if a presidential or prominent legislative candidate says or does something that may be persuasive on a legislative issue, it may be important to use that event or statement in a prompt issue ad, even though no vote is impending.

15. The Chamber and similar groups cannot afford to be tied up in campaign finance enforcement proceedings. Such proceedings use up resources intended for other purposes and the mere threat of such proceedings discourages donor support. For those reasons, as well as because we want to obey the law and certainly do not want to risk punishment for an inadvertent error, it is critical to us to have a clear standard for identifying the type of campaign speech that is subject to federal limitation and regulation. The express advocacy standard – whether an ad

Affidavit of David Keating

* * *

[11 (8 PCS/ MC 200)]

53. CFG does not believe it can effectively fund its issue advocacy by funding it through its political action committee rather than through its § 527 general treasury fund for several reasons: (1) minors cannot contribute to its political action committee; (2) contributions to its political action committee are limited under the BCRA and FECA; (3) corporate contributions to its political action committee are prohibited; (4) CFG's administrative burden would be increased because it would have to track more contributions, complete more paperwork, work harder to raise funds; and (5) less funds would be available for its issue advocacy.

* * *

DECLARATION OF JANICE L. KNOPP

I, Janice L. Knopp, hereby swear and depose as follows, based on my own personal knowledge:

1. I am the Deputy Director of Finance/Marketing Director for the Republican National Committee ("RNC"). I submit this Declaration to discuss: (a) the RNC's use of direct marketing in fundraising; (b) limits on the RNC's ability to raise federal funds through direct marketing; (c) the motivations of RNC donors; (d) fundraising assistance provided by the RNC to state parties; and (e) the inability of state parties to replicate the RNC's fundraising assistance under the Bipartisan Campaign Reform Act ("BCRA"). I base this Declaration on my own personal experience as a direct marketing fundraiser for the RNC. As **[*2]** used herein, "direct marketing" refers to the RNC's solicitation of funds through large volume targeted mail and telephone contacts, typically involving more than 100 identical solicitations, and solicitations via electronic commerce (e.g., the RNC's internet website). See 11 C.F.R. § 110.11(a)(3).

Fundraising and Marketing Background

2. I have nineteen years of experience in professional political party fundraising, which is summarized by my resume and biographical statement. See RNC Exhibits 17 & 2252A, combined and attached as Attachment 1 hereto. From 1997 to the present, I have served as Deputy Director of Finance/Marketing Director for the RNC. From 1993 through 1996, I served as Director of Marketing for the RNC. In those positions, I designed, tested, prepared, directed, and reviewed hundreds of direct mail campaigns and scores of telemarketing campaigns. I estimate that, since I began working for the RNC in 1993, I have been responsible for a direct mail operation that has mailed approximately 630 million solicitation letters. I also estimate that the direct mail and

telemarketing operations I supervise have raised over $520 million for the RNC since 1993.

3. Before joining the RNC, I spent ten years as a direct marketing and fundraising professional for Odell, Roper & Simms, a direct marketing consulting firm. My clients at Odell, Roper & Simms included national and state political organizations, federal and state candidates, national and local non-profit organizations, and trade associations.

4. In addition to my professional experience, I have received formal training in direct marketing. I minored in marketing at West Virginia University and I have attended numerous seminars on direct marketing. I have also appeared as a lecturer at George Washington University's graduate course on campaign management, consulted with many state **[*3]** Republican parties and candidates on their direct marketing operations, and spoken on direct marketing to trade associations, including international conferences for the Association of Fundraising Professionals.

Direct Marketing Fundraising by the RNC

5. My personal experience demonstrates to me that, contrary to common perception, the RNC does not raise the bulk of its money through major donations. To the contrary, the RNC relies on small contributions raised through direct marketing to obtain the majority of its funds. During the nine years that I have been at the RNC, for example, on average 60% of the total funds raised each year by the RNC were raised through direct marketing. See RNC Exhibit 2429, attached as Attachment 2 hereto. In the year 2001, this figure was over 68%. Id. During these same nine years, the average donation to the RNC was about $57. See RNC Exhibit 2430, attached as Attachment 3 hereto. The average direct marketing contribution in 2000 was $43.40.

6. As explained in more detail below, the RNC receives many small donations of non-federal funds. These donations come in a variety of ways:

a. as checks written on small business accounts in response to direct mail solicitations;

b. as checks from individuals designated for the Republican National State Elections Committee ("RNSEC"), to assist the RNC in its efforts on behalf of state parties and candidates; in some instances, the RNC has sent direct mail solicitations specifically seeking to raise funds for the RNSEC accounts, see RNC Exhibit 2431, attached as Attachment 4 hereto; and

[*4] c. as checks from individuals who have reached the limit on the contribution of federal funds, either to the RNC or in the aggregate; any additional donations from such "maxed out" individuals, however large or small, by law must be designated as non-federal.

7. During the 2000 election cycle, approximately 98% of the money raised by the RNC's direct marketing was federal funds. The remaining 2% was non-federal, consisting primarily of some individual donations and checks written on small business corporate checking accounts in response to direct marketing solicitations. These non-federal donations were deposited into one of the RNC's non-federal accounts. In the 2000 election cycle, the non-federal funds raised through direct marketing totaled $3,352,171, comprising 2.8% of all non-federal funds raised by the RNC for the cycle.

8. As noted above, the RNC engages in several different types of direct marketing, particularly through mail, phone, and internet solicitations. These different methods of direct marketing are responsible for widely differing amounts of contributions. In calendar year 2000, for example, the RNC's direct mail efforts raised a total of $89,237,400, of

which $87,106,973 was federal and $2,130,427 was non-federal. The RNC's telephone solicitations in 2000 raised $16,623,300, of which $16,070,769 was federal and $552,531 was non-federal. The RNC's internet website, and other forms of electronic commerce, in calendar year 2000 were responsible for raising $1,927,128, of which $1,908,069 was federal and $19,059 was non-federal.

9. Contrary to common perception, the RNC does not raise the bulk of its non-federal money through corporate contributions. In the 2000 election cycle, for example, the RNC raised $65 million in non-federal money from individuals, but only $51 million from [*5] corporations. See RNC Exhibit 7, attached as Attachment 5 hereto. Overall corporate donations of non-federal money were larger than individual donations in several other recent years, but not by great margins, and certainly not to the extent popularly imagined. Moreover, in every year from 1997-2001, the average corporate donation of non-federal money was significantly lower than the average individual donation. In calendar year 2000, for example, the average corporate donation of non-federal money was $2,226, whereas the average individual donation of non-federal money was $10,410. Corporate donations as a percentage of the RNC's total fundraising, including both federal and non-federal donations, have been declining, and currently stand at 13% for the 2002 cycle. See Attachment 5 hereto.

Limits on the RNC's Ability to Raise Federal Funds Through Direct Marketing

10. I understand that the suggestion has been made that once the BCRA becomes effective, the RNC can simply raise more federal money to replace the non-federal money upon which it has previously relied. I strongly disagree with the suggestion that the RNC can increase its federal fundraising to a degree even remotely necessary to replace the non-federal money lost due to the BCRA. The total amount of

federal funds that the RNC can raise through direct marketing is limited by economic and political constraints. This is true for several reasons.

11. A limited number of likely donors in the population. In my experience, whether a potential donor is likely to give to the RNC depends not so much on the persuasive power of the party's direct mail or telephone solicitations but on economic and demographic factors such as: (a) disposable income; (b) age; (c) propensity to give to charitable and/or political causes; and (d) ideological compatibility with the RNC. Most fundraisers with whom I am acquainted agree that the size of the potential Republican donor market for candidates and **[*6]** party committees is only four to five million individuals. A survey conducted by John McLaughlin & Associates in 2001, however, determined that in calendar year 2000 the "known" Republican donor market consisted of only 2.1 million individuals. See RNC Exhibit 2432, attached as Attachment 6 hereto. My personal experience demonstrates to me that the "known" market is substantially smaller for party committees, as many donors prefer to contribute directly to candidates. In the 2000 election cycle the RNC received donations from 1,030,666 separate donors, indicating to me that the RNC is very close to maximizing the money raised from its fundraising base.

12. The cost of direct mail and telemarketing. The RNC divides direct marketing operations into two categories: (a) prospecting for new donors, and (b) "house file" solicitations of previous donors. Both methods are costly.

13. It is essential for the RNC to invest in growing its donor list. In any given year, the RNC loses approximately 10% of its donors due to attrition (i.e., death, incapacitation, or inability to continue support). The RNC must find 80,000 to 100,000 new donors each year simply to stay even.

14. The political landscape drives the cost of finding new donors. For example, in 1997, following a presidential campaign loss, the RNC spent $2.2 million to get 120,000 new donors. In contrast, following President Bush's victory, in 2001 the RNC spent $816,000 to get 220,000 new donors -- and this differential is despite the fact that after the events of September 11, 2001, the RNC suspended its prospecting operations for roughly one month and reduced them for the remainder of the calendar year.

15. Success in maintaining and building its donor file is also dependent on the amount of money the RNC has available to invest. In my personal experience, prospecting for **[*7]** new donors costs more money than it raises, at least in the short term. During calendar year 1999, for example, the RNC mailed 19,910,307 packages prospecting for new donors and enjoyed a response rate of only 1.14%. The total amount grossed through these mailings was $6,292,600, with an average donation of $26.93. The average cost of these prospecting mailings was 38.5 cents in direct costs plus 1.5 cents in back-end costs. The average amount grossed per piece was only 31 cents. Thus, the RNC "lost" 7.5 cents on each prospecting direct mail solicitation -- a total loss on prospecting of $1,382,204. See RNC Exhibit 2433, attached as Attachment 7 hereto.

16. The RNC therefore prospects for new donors through direct marketing as an "investment" to supplement the party's donor base and to replace donors who die or cease giving. The investment begins to justify the costs, however, only if a new donor gives repeatedly. Because prospecting for new donors actually loses money in the short term, there is a limit to how much prospecting a party can do. Moreover, the average returns fall as the RNC begins prospecting farther and farther from its natural base of likely donors.

17. Though not as expensive as prospecting for new donors, direct mail and telemarketing solicitations of the

RNC's "house file" of previous donors is also expensive. During the 1999-2000 election cycle, for example, the RNC mailed 80,494,349 packages to its "house file" of previous donors and enjoyed a response rate of 2.95%. The total amount grossed through these mailings was $98,094,017, with an average donation of $40.39. The average cost of a direct mail piece to a previous donor was 39 cents. The average amount grossed by such direct mail pieces was only $1.22 per piece. Thus, the RNC netted, on average, only 83 cents on each "house file" direct mail solicitation. See Attachment 7 hereto.

[*8] 18. Telemarketing is even more expensive. During the 1999-2000 election cycle, the RNC placed over 11 million telephone calls (completing over 2.5 million) soliciting contributions from its existing donor file. These calls cost, on average, approximately 45 cents for every $1.00 raised.

19. There is a limit to the number of mail and telephone solicitations that the RNC can profitably direct to its previous donors. If the RNC makes too many solicitations, it risks alienating its donor base and limiting its capacity to raise money in the future. Also, at a certain point each additional solicitation produces a smaller and smaller average gross return. Further, if the RNC's small donor base were to believe -- as the reformers contend -- that the RNC is "selling out" to large donors, then the RNC would run the risk of losing many small donors. It is clear to me that our small donors do not believe that our large donors have bought control of the Republican Party.

20. The cost of raising funds through direct marketing has risen substantially since I have been at the RNC. Since I joined the RNC in 1993, non-profit postage rates have risen 30% and first class postage has risen 28%. The postage increase on June 30, 2000, for example, will add approximately $1.1 million to $1.4 million to the cost of the RNC's direct marketing program over the course of a year.

Additional postage increases that will inevitably occur in the future will drive costs even higher.

21. Overall, in recent years, specifically 1997 through 2000, it has cost the RNC 47.8 cents to raise each dollar of federal money, and 18.4 cents to raise each dollar of non-federal money.

22. Competition from other charitable and political organizations. The amount of federal funds that the RNC can raise is also limited by competition from other [*9] charitable and political organizations. In some cases, these organizations compete directly for the same segment of the population that constitutes the RNC's likely donor population. There are numerous religious, social, and political organizations that solicit donations from the very people who most closely fit the RNC's likely donor profile. Also, some of the organizations with which the RNC, and political parties generally, compete are 501(c)(3) organizations, which have a considerable competitive advantage because contributions to them are tax-deductible. See RNC Exhibits 1754, 1672, 1409, 1364, and 1295, attached as Attachments 8-12 hereto (collecting newspaper articles about the increased competition for charitable donations). In addition, fundraising competition from charitable organizations has increased noticeably since the events of September 11, 2001, which spurred increased levels of support for the Red Cross and terrorism-related victim support groups.

23. In my personal opinion, it seems that competition forf ederal funds will intensify after the effective date of the BCRA, in view of the BCRA's prohibition on political party solicitation or use of non-federal funds. More activity at the local, state, and federal level will be paid for only with federal funds. Moreover, because of restrictions within the BCRA on transfers of funds among party committees for certain purposes, the BCRA will increase the competition between the RNC, the NRCC, and NRSC on the

one hand, and state and local parties on the other, for small donations.

24. The party's political successes and failures. The capacity of the RNC to raise money is also constrained, particularly in the shorter term, by the Republican Party's political successes and failures. The RNC's ability to raise federal funds typically falls after Republican Party candidates suffer setbacks at the polls. For example, after the November 1998 elections, the RNC's rate of return on direct marketing fell dramatically. Similarly, the RNC's **[*10]** rate of return on direct marketing fell in April 1995 after the balanced budget constitutional amendment failed to pass Congress. By contrast, the RNC's rate of return on direct marketing rose after the November 1994 elections and also rose during the early days of the 104th Congress when Congress passed a number of bills collectively known as the "Contract with America." The RNC's rate of return on mailings to donors dropped 37% in 1997 over the previous 1996 presidential election year's results. In contrast, the RNC's rate of return on direct marketing rose after the election of President George W. Bush in November 2000.

Motivations of Donors to the RNC

25. In my personal experience conducting direct marketing for the RNC, I have observed that what motivates donors to give money to the RNC is a belief that the Republican Party holds and advances a political philosophy that they support. People who do not share the Republican Party's ideology are unlikely to respond to the RNC's direct marketing. Further, the return rate on the RNC's direct marketing correlates in the shorter term with the Republican Party's electoral and policy successes and failures. Perhaps most importantly, of the scores of direct marketing messages that I test, use, and review each year, those that perform best are those that emphasize the Republican Party's core political philosophy of lower taxes and less government and the RNC's

important role in federal and state elections. In short, the RNC's fundraising success depends on its appeal to persons desiring to associate with its governing philosophy.

26. My personal experience demonstrates that the conclusions expressed above are not limited to small donors. I have observed that the same factors that motivate the RNC's smallest donors also motivate the RNC's major donors. For example, the amount of money raised by the RNC's telemarketing operation and the RNC's Team 100 major donor **[*11]** program has been roughly equal in many years since 1993. This correlation suggests that large and small donors are influenced by the same factors. Based on my personal experience, these factors, principally, are: (a) the health of the economy and the amount of disposable income donors have; (b) whether donors perceive the RNC to be successfully advancing a political philosophy that they share; and (c) the type of year in which fundraising is conducted, namely odd years (when there are fewer elections) versus even years (when most local, state, and federal elections are held).

Inability of State Parties to Replicate the RNC's Fundraising Role

27. The BCRA's ban on political party use of non-federal money will have a profoundly detrimental effect on state parties, because they will be unable to maintain their funding levels without RNC assistance. Generally, the RNC assists state and local parties financially by direct transfers to these parties of both federal and non-federal money, assistance in raising federal and non-federal money, and by direct financial assistance of non-federal money to state and local candidates. It is important to understand that the transfers from the RNC to the state parties aren't dollars, after the RNC has incurred and paid the costs of fundraising. For the state parties to replace these non-federal transfers with federal money, they must raise not only the amount of the transfers, but also the amount of fundraising costs incurred to raise the

amounts transferred. As noted above, it costs the RNC 47.8 cents to raise every dollar of federal funds; even if, as I and other fundraising experts consider highly unlikely, the state parties are just as efficient as the RNC in raising federal funds, they will need to raise $1.48 for every $1.00 now transferred to them just to stay in the same place. It is inconceivable to me that they can make up this shortfall. My reasons follow.

[*12] 28. After the BCRA becomes effective, the RNC will have no non-federal resources to transfer to the state parties. Accordingly, it is clear that the state parties will need to shoulder a much larger proportion of their own fundraising. Moreover, it will be a crime for the RNC to help state parties raise non-federal money, and the RNC will have an urgent need for its federal money. Further, I understand that the state parties will have a greater demand for federal money, since the BCRA severely limits their ability to raise and spend non-federal money.

29. It is unlikely that many state parties will be able to meet the funding challenges created by the BCRA's restrictions on the RNC. Simply put, the fundraising capacity of the RNC is significantly greater than that of state political parties, and it cannot be matched by them. I draw this conclusion for several reasons:

a. First, as the official national Republican Party committee, the RNC has a "brand name" and prestige that the state parties, by definition, do not. Prospective donors are much more likely to have heard of the RNC, to consider it accountable and credible, to understand its role in the political process, and to trust that its activities are aligned with the national Republican Party agenda. Further, several state Republican Party organizations are largely inactive, and thus are unable to present compelling reasons for donors to support them.

b. Second, the RNC has a large direct marketing and fundraising staff, consisting at any given time of 40-45 employees, all of whom are full-time professionals with substantial experience in the field. State parties, in contrast, generally lack professional fundraising staff. Because it is a well-known national party committee, the RNC also tends to attract the most talented and dedicated marketing and fundraising employees and consultants. It is more difficult for state parties to do so.

[*13] c. Third, the size and scope of the RNC's direct marketing and fundraising operations enable it to achieve economies of scale that state parties simply cannot match. For example, the RNC's cost per mail piece in a nationwide fundraising campaign is substantially lower than the cost per mail piece of a statewide campaign conducted by a state party, because the volume of mailings is so different. The RNC, therefore, can conduct direct market fundraising more cost-effectively than state parties can.

d. Fourth, as a national organization, the RNC is able to "go where the money is" with much greater ease and ability than a state party. For example, under current law, the RNC can hold a fundraiser in New York, then re-distribute that money internally to support a candidate running for state office in Mississippi. The Republican Party of Mississippi, in contrast, is much less likely to have fundraising success in New York. The BCRA would largely eliminate the RNC's ability to deploy its fundraising resources at the state level. The ability of the RNC to raise funds nationwide is demonstrated by the attached charts that sort the RNC's federal and non-federal contributions by state for calendar year 2000 and year-to-date for 2002 (as of June 28). See RNC Exhibits 2259 and 65, attached as Attachments 13-14 hereto. Both charts show that the RNC raised federal and non-federal money from all 50 states. Id. Again, because the BCRA would prohibit the RNC from raising or transferring any non-federal money, or from assisting states in their fundraising

efforts, state parties would lose the tremendous benefit of the RNC's fundraising prowess.

e. Finally, as noted above, my experience has demonstrated to me that donors have fairly firm limits on the amount of money they are willing and able to contribute to political parties. This is a fact of the marketplace that will not change merely because of the BCRA. Because the RNC is so much more prominent than state parties are, my **[*14]** experience suggests that party donors are -- and will continue to be -- inclined to allocate more of their contributions to the RNC than to state parties.

30. I understand that the reformers here argue that the BCRA will actually help the state parties by reducing competition for funds between state and national parties. This suggestion is ill-informed and incorrect, and I know no professional fundraisers who believe it. To begin with, while the BCRA prohibits national parties from raising, spending, or directing non-federal money, state parties could theoretically benefit from this prohibition only if their ability to raise and spend non-federal money currently raised by national parties were unaffected. But I understand that the BCRA severely restricts the ability of state parties to raise and spend non-federal money. Accordingly, the BCRA will intensify the competition between state and national parties for federal money, which will be even more valuable under the BCRA than it is today. State parties may deflect some small percentage of federal money from national parties, but not enough to make up the shortfall. For the reasons set forth above, the national parties will likely retain their greater ability to raise non-federal money -- even though they will fall far short of replacing the non-federal money raised now with federal money -- and state parties will clearly suffer in this competition.

31. The various RNC exhibits attached to this declaration are to the best of my knowledge true and correct

copies of records kept by the RNC in the course of its regularly conducted business activities.

I hereby declare under penalty of perjury that the foregoing is true and correct.

October 3, 2002 s/ Janice L. Knopp

[EXHIBITS OMITTED]

THE TERRANCE GROUP

Research for Decisions in Politics and Public Affairs

Executive Summary

October 11, 2000

To: **Committee for Economic Development**

From: **William Stewart**

Subject: **Key Findings from a Survey of Corporate America about Campaign Finance**

These key findings are drawn from telephone interviews with N=300 'corporate executives' employed by major U.S. corporations. The margin of error associated with a sample of this type is ± 5.8% at the 95% confidence level. Responses were gathered from September 12 to October 10, 2000.

A decisive majority (79%) of Corporate America feels that the campaign finance system is broken and should be reformed.

- This sentiment stands at 75% among those executives whose companies are soft money donors, and 82% among those whose companies do not make soft money contributions. In fact, this figure exceeds 70% among every major demographic subgroup.

There are several reasons that help explain why a majority of executives feel the campaign finance system is broken.

51% *agree that many business executives fear adverse legislative consequences to themselves or their industry if they turn down requests for campaign contributions from high-ranking political leaders and/or political operatives.*

66% *agree that the burdens of fundraising have reduced competition in congressional campaigns and diminished the number of qualified candidates for federal elections*

75% *agree that business leaders believe that political contributions give them an advantage in the shaping of legislation.*

79% *agree that the current campaign finance system has spawned an arms race for cash that continues to get more-and-more out of control.*

- The bottom line is that executives are more likely to believe that Corporate America contributes to political campaigns because it wants something in return (73%) as opposed to the betterment of the political process and discourse (17%).
- Moreover, in response to a separate question, the plurality of executives indicates that the foremost reason why Corporate America contributes to political campaigns is "to avoid adverse legislative consequences" (31%). The next most frequently cited response is "to buy access to influence the legislative process" (23%). These responses are followed by "to promote a certain ideological position" and "to support the electoral process" (22% and 12%, respectively).
- A slim majority (55%) of corporate executives would characterize the amount of money being solicited from American business leaders and corporate treasuries by political candidates and parties as either "excessive" or "high, but not excessive." Thirty-one percent (31%) feels the amount of money being solicited is "moderate," and just 6% would say it is "low."
- These issues are troubling to many executives because they ultimately affect corporate reputations. Seven-in-ten (71%) executives indicate that stories and other reports of big dollar political contributions cause everyday, average Americans to have a less favorable impression of Corporate America.

The net impact of these perceptions is that Corporate America is generally supportive of many different campaign finance reform proposals.

53% support a publicly financed matching system for small-dollar contributions below $200.

60% support a ban on all soft money contributions from corporations, labor unions, and individuals.

65% support increasing the limit on individual contributions.

66% support voluntary spending limits for federal campaigns.

- When asked what the individual contribution limit should be, no single response garners a clear plurality. For example, seven percent (7%) feel it should be less than $1,000, 20% feel it should be $1,000 exactly, 16% feel it should be $3,000, 28% feel it should be $5,000, 21% feel it should be $10,000 or more, and another eight percent (8%) have no opinion.
- That said, among those executives who are supportive of an increase in the individual contribution limit, 42% believe the limit should be $5,000.
- These reform proposals generally transcend partisan lines by capturing over 50% support among Republicans, Democrats, and Independents. The exception is the proposed publicly financed matching system, which stands with 45% support among Republican executives as compared to 73% among Democrat executives.

Executives generally see eye-to-eye on issues pertaining to campaign finance regardless of whether or not their company has made a soft money contribution.

- The issue that draws the greatest margin between these two groups is whether or not political contributions give business leaders an advantage in the shaping of legislation. Fully 80% of executives from companies that have not made soft money contributions feel that political contributions give donors a legislative advantage, while only 67% of executives whose companies make soft money contributions would agree with this sentiment.

- On the issue of whether or not soft money contributions from corporations, labor unions, and individuals should be banned, 62% of executives from companies that have not made soft money contributions would support this initiative. Comparatively, support drops only five percentage points among executives whose companies make soft money contributions (57%).
- On the issue of why corporations give soft money contributions, 76% of executives from companies that have not made soft money contributions feel that contributions are made in order to buy access to influence the legislative process. Even among executives whose companies make soft money contributions, 70% would concur with this viewpoint.

This survey also reveals some interesting findings about the demographic composition of Corporate America.

- Forty-two percent (42%) of the executives interviewed for this survey are employed by companies that made a soft money contribution during the 1998 and/or 2000 campaign cycle.
- Eighty-six percent (86%) of the executives interviewed for this survey have personally made a contribution to a political candidate or party.
- Eighty-nine percent (89%) of the executives interviewed for this survey are male.
- Fifty-nine percent (59%) of the executives interviewed for this survey consider themselves Republican, 22% consider themselves Independent, and 19% consider themselves Democrat.
- Forty-one percent (41%) of the executives interviewed

for this survey entered the workforce in the 1960's or earlier, 40% entered the workforce in the 1970's, and 19% entered the workforce in the 1980's or later.

- All of the executives interviewed for this survey were vice presidents or higher within their respective corporations, with 19% being executive officers (e.g. CEO, CFO, COO, et cetera).

CAMPAIGN FINANCE: A Survey of Corporate America

THE TARRANCE GROUP
Study Number: 8417
Field Dates: September 12 - October 10, 2000
Sample: N=300 Senior Business Executives throughout the United States

---

Hello, I'm _____of The Tarrance Group, a national public affairs research firm. May I please speak with [**NAME ON THE SAMPLE SHEET**]?

IF NAME ON THE SHEET IS NOT AVAILABLE, ASK:

Is there a time when I might be able to speak with [NAME] either later today or tomorrow?

(Schedule a callback and make a notation on the sample sheet) _____

IF NAME ON SHEET IS AVAILABLE, ASK:

Hello, I'm _____of The Tarrance Group, a national public affairs research firm. We recently sent you a letter asking for your participation in our national survey of senior business executives regarding campaign finance. This survey will take approximately 9 minutes of your time, **and I want to assure you that your responses are completely confidential and will be used for summary analysis only**. May we begin the survey now?

IF "YES", CONTINUE ONTO Q1

IF "NO, THIS IS NOT A CONVENIENT TIME", ASK:

Is there a better time I might call you back either later today or tomorrow?

(Schedule a callback and make a notation on the sample sheet) _____

IF "NO, I DO NOT WANT TO PARTICIPATE AT ALL", SAY:

Thank you for your time.

Thinking about why American businesses contribute to political parties and their candidates...

1. Which of the following comes closest to your own opinion about why Corporate America contributes to political campaigns? Would you say it is... **(ROTATE)**
   - To promote a certain ideological position
   - To support the electoral process as part of its civic duty
   - To buy access to influence the legislative process
   - To avoid adverse legislative consequences

   To promote a certain ideological position 21.7%
   To support the electoral process 12.0%
   To buy access to influence the legislative process 22.7%
   To avoid adverse legislative consequences.....31.0%
   NONE OF THE ABOVE **(DNR)** 2.3%
   OTHER **(Specify) (DNR)**.....8.3%
   UNSURE / REFUSED **(DNR)** 2.0%

As you may be aware, the current campaign finance laws prohibit corporations and trade unions from directly contributing to political campaigns. However, they are allowed to make unlimited contributions to political committees, like the Republican National Committee and the Democrat National Committee. These types of contributions are often called "soft money" contributions.

2. Thinking about this information, which one of the following statements comes closest to your own opinion? **(READ AND ROTATE)**

   (Some people / Other people) say that... American corporations give large "soft money" contributions out of a sense of civic duty.

   (Other people / Some people) say that... American corporations give large "soft money" contributions to buy access in order to influence the legislative process.

Again, which viewpoint comes closest to your own?

Contribute out of a sense of civic duty.....17.3%
Contribute to influence the legislative process 73.3%
NEITHER **(DNR)** 5.3%
BOTH **(DNR)**.....3.0%
UNSURE/REFUSED **(DNR)**.....1.0%

Still thinking about the role of Corporate America in this process...

3. How much pressure is placed on American business leaders to make large political contributions?

A lot.....20.3%
Some.....53.7%
Not very much.....20.3%
None whatsoever.....3.3%
OTHER **(Specify) (DNR)**.....0.0%
UNSURE / REFUSED **(DNR)**.....2.3%

---

4. Generally speaking, do you feel the level of pressure being placed on American business leaders to make large political contributions has increased, decreased, or stayed about the same since the last presidential election in 1996?

IF "INCREASED" / DECREASED", ASK:

And, do you feel it has (increased / decreased) a lot or just somewhat?

Increased / a lot.....12.3%
Increased / somewhat 26.0%
Stayed about the same 55.3%
Decreased / somewhat.....1.3%
Decreased / a lot 0.3%
UNSURE / REFUSED **(DNR)**.....4.7%

---

5. And, how would you describe the amount of money being solicited from American business leaders and their corporate treasuries by political candidates and parties? Is it... **(ROTATE)**

Excessive 22.3%
High, but not excessive.....33.0%
Moderate 30.7%
Low 6.3%
UNSURE/REFUSED **(DNR)** 7.7%

---

6. To what extent do you think American business leaders are concerned that their contributions are being used to fund negative political ads? Would you say they are... **(ROTATE)**

Extremely concerned 7.3%
Somewhat concerned 40.0%
Not too concerned.....37.7%
Not concerned whatsoever.....12.7%
UNSURE/REFUSED **(DNR)** 2.3%

Thinking for a moment about the recent political conventions...

There were several stories in the news about the amount of corporate spending at these events, including stories about groups of donors who had contributed in excess of $250,000.

7. When everyday, average Americans see these stories and other reports of big-dollar political contributions, do you think it has an impact on the impression they have of **Corporate America**? Specifically, do you think they have a more favorable impression of Corporate America, a less favorable impression of Corporate America, or doesn't it make any difference at all?

IF A CHOICE IS MADE, ASK:

And, do you feel strongly about that?

More favorable/strongly 0.7%
More favorable/somewhat 1.3%
UNSURE/REFUSED **(DNR)** 1.7%

NO DIFFERENCE **(DNR)** 25.3%
Less favorable/somewhat.....37.7%
Less favorable/strongly.....33.3%

Now, I am going to read you a series of statements that some people have made regarding our campaign finance system. For each one, please tell me whether you agree or disagree with the statement. Here is the first one...

(RANDOMIZE LIST)

IF A CHOICE IS MADE, ASK: *And, do you feel strongly about that?*

8. The burdens of fundraising have reduced competition in congressional campaigns and diminished the number of qualified candidates for federal elections.

AGREE		UNSURE	DISAGREE	
Strng	Smwhat	REFUSED (DNR)	Smwht	Strng
41.0%	24.7%	4.3%	21.7%	8.3%

9. Many business executives fear adverse legislative consequences to themselves or their industry if they turn down requests for campaign contributions from high-ranking political leaders and/or political operatives.

AGREE		UNSURE	DISAGREE	
Strng	Smwhat	REFUSED (DNR)	Smwht	Strng
17.3%	33.3%	3.3%	29.3%	16.7%

10. Generally speaking, business leaders believe that political contributions give them an advantage in the shaping of legislation.

AGREE	UNSURE	DISAGREE	AGREE	UNSURE
25.3%	49.3%	2.7%	15.0%	7.7%

11. The current campaign finance system has spawned an arms race for cash that continues to get more-and-more out of control.

AGREE	UNSURE	DISAGREE	AGREE	UNSURE
43.3%	35.3%	1.7%	14.7%	5.0%

12. The interests of everyday, average Americans are ignored because campaigns have become too dominated by large corporations.

AGREE	UNSURE	DISAGREE	AGREE	UNSURE
16.0%	15..0%	2.0%	24.3%	42.7%

(END RANDOMIZATION)

Generally speaking...

13. To what extent are you concerned about a decline in voter participation in the electoral process?

Extremely.....21.0%
Very 32.0%
Somewhat.....35.0%
Not at all.....11.7%
UNSURE / REFUSED **(DNR)** 0.3%

Now, thinking about the campaign finance system overall.

14. Do you believe that the current campaign finance system is broken and should be reformed?

Yes 78.7%

No.....18.0%
UNSURE / REFUSED **(DNR)**.....3.3%

As you may or may not know, the individual contribution limit of $1,000 per candidate was established in 1974 by the *Campaign Finance Reform Act* and has not been adjusted since then...

15. Knowing this information, would you support or oppose increasing the limit on individual contributions?

IF A CHOICE IS MADE, ASK:

And, do you feel strongly about that?

Support/strongly.....39.7%
Support/somewhat.....25.7%
UNSURE/REFUSED **(DNR)**.....6.7%
Oppose/somewhat.....11.7%
Oppose/strongly.....16.3%

Still thinking about the limits on individual contributions to political candidates -

16. What do you think should be the individual contribution limit to political candidates? **(READ LIST)**

Less than $1,000.....7.0%
$1,000.....20.3%
$3,000.....16.0%
$5,000.....28.0%
$10,000.....10.7%
More than $10,000.....10.0%
UNSURE/REFUSED **(DNR)**.....8.0%

There have been many solutions offered to amend our federal campaign finance system. Please listen as I read you some of the proposals, and for each one, tell me whether you support or oppose the idea. Here's the first one...

IF A CHOICE IS MADE, ASK: *And, do you feel strongly about that?*

17. A publicly financed matching system for small-dollar contributions below $200 to encourage broader electoral participation and reduce the reliance on large contributions

SUPPORT		UNSURE/	OPPOSE	
Strng	Smwhat	REFUSED (DNR)	Smwht	Strng
23.7%	29.0%	4.7%	16.0%	26.7%

18. Voluntary spending limits for federal campaigns.

SUPPORT	UNSURE/	OPPOSE	SUPPORT	UNSURE/
Strng	Smwhat	REFUSED (DNR)	Strng	Smwhat
35.0%	30.7%	5.0%	14.7%	14.7%

19. Keeping in mind that "soft money" refers to unlimited, and largely unregulated political contributions to political committees. Would you support or oppose a ban on all unlimited "soft money" contributions from corporations, labor unions, and individuals.

SUPPORT	UNSURE/	OPPOSE	SUPPORT	UNSURE/
Strng	Smwhat	REFUSED (DNR)	Strng	Smwhat
42.0%	18.0%	2.3%	18.7%	19.0%

Just a few final questions for statistical purposes only...

20. Have you ever personally made a contribution to a political candidate or party?

Yes 85.7%
No.....13.7%
REFUSED **(DNR)** 0.3%
UNSURE **(DNR)** 0.3%

---

21. In what year did you enter the workforce? **(RECORD EXACT YEAR)**

1960s or earlier 41.0%
1970s.....40.3%
1980s or later 18.7%

---

22. Generally speaking, do you think of yourself as a Republican, a Democrat, an Independent, or something else?

IF REPUBLICAN OR DEMOCRAT ASK:

Would you call yourself a strong or not very strong (Republican/Democrat)?

Republican/strong 35.7%
Republican/not strong 19.3%
Lean Republican 3.7%
Independent.....18.7%

IF INDEPENDENT OR ANYTHING ELSE, ASK:

Do you think of yourself as closer to the Republican or Democrat Party?

Lean Democrat.....2.0%
Democrat/not strong 8.0%
Democrat/strong.....8.7%
NO PREFERENCE **(DNR)** 1.0%
OTHER **(DNR)**.....1.3%
UNSURE/REFUSED**(DNR)** 1.3%
NOT REGISTERED TO VOTE **(DNR)** 0.3%

Thank you very much for participating in this survey. We appreciate your time.

D1. RECORD GENDER BY OBSERVATION:

Male 88.7%
Female.....11.3%

D2. RECORD JOB TITLE / POSITION FROM SAMPLE SHEET:

Executive Officer (e.g. CEO, CFO, etc.).....19.0%
VP of Government Affairs / Public Affairs 18.0%
Other Corporate Executive 63.0%

D3. RECORD COMPANY SOFT MONEY CONTRIBUTION RECORD FROM 1997 TO 2000:

Soft money donor.....42.0%
Non-donor.....58.0%

[1 (11 PCS/ NRA 1)]

DECLARATION OF WAYNE LAPIERRE

1. I am the Executive Vice President of the National Rifle Association (the "NRA"). As such, I have ultimate responsibility for the operations of the NRA. I have held this position since 1991. For the five years prior to my appointment to this position, I was the Executive Director of the NRA's Institute for Legislative Action. At the same time, I was the Chairman of the NRA's Political Action Committee, the Political Victory Fund.

2. The primary purpose of the NRA is to preserve and protect the Second Amendment's guarantee that individuals shall have the right to "keep and bear arms." *See* Exhibit 1 (NRA 01469-01527). Additionally, the NRA promotes public firearm safety, trains law enforcement agencies in the use of firearms, sponsors shooting competitions, and advances hunter safety. *Id.* Indeed, the NRA has spent over $20 million on gun safety in the last ten years.

3. The NRA's exercise of its free speech rights is critical to the fulfillment of its mission. The Second Amendment and the NRA are at the center of a culture war. In recent years, liberal politicians and their friends and allies in the media industry have sought to change [2 (11 PCS/ NRA 2)] American culture, particularly concerning the individual right to own and use firearms. They have tried to demonize the NRA and denigrate the Nation's heritage of hunting and of responsible gun ownership. This campaign has been based on crude and inaccurate stereotypes and outright lies about the NRA and its positions. In response to such attacks, the NRA has joined this battle. If the Republic's first freedom--the right to keep and bear arms--is to be preserved, the NRA must defend our common cultural heritage, including the important role that responsible gun ownership has played in the lives of countless Americans since the Nation's founding.

4. The Bipartisan Campaign Finance Reform Act ("BCRA") effectively cedes the entire battlefield in this cultural war to the broadcast media corporations and the politicians. It allows federal candidates and the big media conglomerates to say whatever they want about the NRA in the months before an election and shields them from any effective response by prohibiting the NRA from uttering the name of its attackers. Working in tandem, anti-gun politicians and their friends in the media can attack the NRA, and the NRA will have to stand by silent, unable to respond directly to its attackers. The law thus stacks the deck in favor of huge for-profit media corporations, such as Disney, General Electric, Viacom, and AOL/Time Warner and their political allies. These media conglomerates can give as much free airtime to their political allies as they like. They can also tout anti-gun politicians in news stories to their hearts' content. The value of such free airtime is enormous. And no matter how unfairly the NRA is attacked by politicians working through the media, the NRA will be unable to respond directly to its attackers.

5. Access to paid broadcasting media has been critical to defending the integrity of the NRA's reputation. Anti-gun politicians frequently engage in unprovoked attacks on the NRA in an effort to generate political support. Such attacks are typically based on distortions about the NRA's positions. In mounting these challenges to the NRA, politicians have far more access [3 (11 PCS/ NRA 3)] to free airtime than do the NRA and other similar organizations. When the NRA is permitted to speak on the national media, it rarely has a chance to get the full side of its story out. Thus, the ability to buy airtime is essential for the NRA to respond to such attacks, whenever they occur.

6. The NRA's access to paid media serves two other critical functions. First, television and radio are critical media for educating the public about Second Amendment issues. The mainstream media is dominated by anti-gun interests and simply does not report on many legislative pro-

posals and other significant events that impact the interests of America's 80 million gun owners.

7. Second, the NRA's television and radio advertising is essential to the NRA's efforts to hold politicians accountable on legislative and public policy issues related to the Second Amendment. Increasingly, when election time comes around, some anti-gun politicians pretend to be in favor of the Second Amendment when it serves their interests. The NRA's advertising seeks to identify the inconsistencies between these politicians' rhetoric and their actual records in public office. In the paragraphs below, I detail the ways in which the NRA's television and radio advertising and programs have furthered each of these important interests.

I. The NRA's Television Broadcasts Educate The Public

8. Educating the public about issues relating to gun ownership plays a critical role in preserving Second Amendment rights. A well-informed citizenry is the best defense against infringement of the protections found in the Bill of Rights. If citizens are not informed about the wide variety of threats to Second Amendment rights, they will not be in a position to act effectively to mobilize and make their opposition to such policies known.

9. The national media has willfully ignored important news stories that bear on individuals' right to keep and bear arms. There are numerous examples at home and abroad of im[4 (11 PCS/ NRA 4)]portant developments relating to the registration and confiscation of guns that have gone virtually unreported by the media conglomerates that control the television industry in this country. In response to this blackout on coverage of issues of importance to the NRA and its members, the NRA decided to embark on an extensive series of in-depth reports on issues of importance to gun owners. We modeled our broadcasts on the type of in-depth coverage provided by television news magazines such as 60 Minutes. We used a 30-minute format that permitted detailed

and thorough treatment of the topics that we covered. The same reporter, Ginny Simone, conducted all of the interviews for these programs. Ms. Simone is a former television anchor and reporter who is now an employee of the Mercury Group, a well-respected media company based in Alexandria.

10. In the year 2000, the NRA developed and ran several such 30-minute educational broadcasts. The NRA's programs ran over 11,000 times during the course of 2000. *See* Exhibit 2 (NRA-ACK 03301-03304). The broadcasts were aired both on national cable channels and in targeted markets in virtually every state in the Union. *See id.* It cost the NRA over $13 million to pay for these broadcasts. *See id.*

11. Each of the programs had several segments. As detailed below, the segments addressed a variety of important topics touching upon both national and international trends that threaten gun ownership rights. Time and again, viewers of these programs have told me that before seeing our programs they had no idea about the issues we covered in these broadcasts. Viewers across the country have repeatedly expressed their gratitude that the NRA brought this information to their attention. Clearly, these ads have served an important purpose in educating and informing viewers.
[5 (11 PCS/ NRA 5)]

12. One of the NRA's 30-minute television programs that aired in 2000 was entitled "California." *See* Exhibit 3 (NRA-ACK 00005). This program covered the increasing efforts to restrict private ownership of firearms in California. The program described the inception of gun control legislation in California in 1989 and its dramatic expansion in subsequent years. The broadcasts included the specific attacks against NRA by the sponsors of the legislation at the time of its passage by the California legislature. The program showed interviews with gun owners in California discussing their concern that their rights were being increasingly restricted. Numerous interviewees described confusion, even on the part of experts and authorities, regarding what is and is

not legal under the new laws. One competitive target shooter explained that she risked criminal prosecution in California simply because the customized firearm she competed with technically qualified as an assault weapon. And the news commentary reported that though convicted felons cannot be forced to register a firearm because doing so violates their Fifth Amendment rights against self-incrimination under the Supreme Court's decision in *Haines v. United States*, law-abiding citizens can and are being forced to do precisely that.

13. During the entirety of the 30-minute program, there was only one fleeting reference to a federal candidate for office. Specifically, during a short segment urging viewers to join the NRA and describing the benefits of membership, a cover of an issue of the NRA's magazine "First Freedom" depicting Vice President Gore, then a presidential candidate, flashed on the screen for several seconds.

14. The program detailing California's restrictions on gun ownership ran over 800 times in California from August 29, 2000 through November 5, 2000. *See* Exhibit 2. None of these airings were intended to influence a federal election. Indeed, California was not in play in [6 (11 PCS/ NRA 6)] the 2000 presidential election. Vice President Gore was widely, and correctly, viewed as a certain winner in California.

15. During 2000, the NRA also aired a broadcast entitled "It Can't Happen Here." *See* Exhibit 4. NRA-ACK 00012. This program was substantially similar to the "California" program, with only minor variations. This show was run throughout the United States from August through October of 2000. *See* Exhibit 5 (NRA-ACK 06539, 06323, 07557, 12110). Although Vice President Gore's image on the cover of the NRA's magazine appears on the screen for a few seconds during this 30 minute broadcast, this broadcast was not intended to influence a federal election in any way.

16. In 2000, the NRA also paid to televise a program entitled "The Truth About Prosecution(s)," Exhibit 6 (NRA-ACK 00004), that ran for nearly 30 minutes and specifically responded to various proposals and comments of President Clinton relating to private ownership of firearms and Second Amendment rights. This broadcast was aired on numerous occasions in various markets around the country from June through October 2000. See Exhibit 7 (NRA-ACK 07838, 07909, 06372). In the first segment, Charlton Heston recited various assertions by President Clinton about how he has promoted gun safety while the NRA has opposed it. Mr. Heston responded to each one with facts and statistics showing that prosecutions declined under Clinton's administration and that the supposed effectiveness of the Brady Bill that President Clinton trumpets was belied by the lack of actual arrests and prosecutions. In addition, Charlton Heston corrected President Clinton's repeated misrepresentations that Congress "can't act" "because of the heat the NRA has put on them," that the NRA is against anything that would make society safer even as 13 children die each day from gun accidents, and that the reason other countries have lower rates of gun-related deaths is "because they don't have an NRA." These [7 (11 PCS/ NRA 7)] were outrageous and grotesque distortions of the NRA's record that nonetheless received extensive media coverage and threatened to carry great weight with the American public. On behalf of its members, the NRA was obliged to respond to such comments on a similar scale.

17. It is absolutely paramount to the NRA's mission that it respond to such charges by broadcasting its own speech directed at the charges and the source from which they came; and the NRA used this first segment of its broadcast to do precisely that.

18. The second segment centered on extensive, unscripted, on-the-scene interviews with American citizens. In it, the reporter visited low-income projects in the inner-cities that are ravaged by high rates of violent crime and in which law-abiding residents are deprived by firearms restrictions of the ability to protect themselves. Those interviewed complained that only they--the law abiding citizens--are de-

prived of firearms, while gangs and criminals have ready access to them. The report also explained that HUD (Housing & Urban Development) was preparing to sue the gun industry even as Attorney General Janet Reno failed to undertake prosecutions that would enforce federal firearms laws that are on the books. The third segment then reprises the first segment. The overriding purpose of this broadcast was to defend the NRA and to respond to the allegations made by President Clinton.

19. After the 2000 election, the NRA continued to run 30 minute programs designed to educate the public. In 2001, the NRA paid to televise the "NRA Report on the UN," Exhibit 8 (NRA-ACK 00009), that ran for nearly 30 minutes on numerous occasions and in various markets throughout the country. This broadcast highlighted the conflict between the international effort to restrict private ownership of firearms, spearheaded by the United Nations, and the cherished right of Americans to keep and bear arms. I opened the show by talking about the great generation of Americans who saved the world for freedom in World War II and the prospect that the next generation of Americans may be called upon to do the same thing. This segment then discussed the importance and potential of [8 (11 PCS/ NRA 8)] the next generation of American children and the importance of raising them correctly and showing them the meaning of freedom. The next segment described how the United Nations is moving far beyond its initial charter and formulating all-encompassing global standards that threaten to replace those contained in the Bill of Rights. Interviewees from the Philippines and Mexico recounted their experiences growing up under oppressive regimes that deprived them of the firearms with which they might protect themselves. Reports from around the world demonstrate that firearm bans in Australia, England and other countries have backfired, with crime escalating but governments refusing to admit it. Congressman Bob Barr then commented that the greatest threat posed by the UN is that it will undermine the freedoms we

treasure. Bob Barr added that the NRA can play an important role as a nongovernmental observer in monitoring what the UN is doing. In the final segment, I explained that the international movement to ban guns has reached our shores, taking root in California. I warned that the UN may soon try to impose this global policy upon us.

20. In 2001, the NRA also paid to televise a program that surveyed efforts abroad to restrict firearms and warned of the prospect that those efforts might reach American shores. *See* Exhibit 9 (NRA-ACK 00019). The first segment covered the imposition of firearm restrictions in South Africa and the complaints of law-abiding firearm owners who have had their rights curtailed in the face of civil disorder and high crime against which they can no longer defend themselves. The second segment covered the imposition of firearm restrictions in Canada and complaints of firearm owners along the lines of those in South Africa, echoing warnings to Americans that they should vigilantly defend their rights lest they suffer the same fate. The third segment covered the massive government buy-back of guns in Australia and the complaints and [9 (11 PCS/ NRA 9)] warnings of firearm owners there. Without our paid programming, these important stories would not have been covered.

21. The NRA has also run advertisements to educate the public about pending legislation. Often such commercials will mention the name of a federal officeholder. For example, in 1994, the NRA ran a series of more than ten, thirty-second advertisements, Exhibit 10 (NRA-ACK 0003), featuring Charlton Heston responding to President Bill Clinton's assertions in favor of proposed legislation, a so-called "Crime Bill," that he was supporting. In each of these advertisements, Charlton Heston would say that, "what Bill Clinton's not telling you about the Crime Bill should be a crime." Charlton Heston pointed out that Bill Clinton was misrepresenting crucial aspects of the Crime Bill and corrected various misrepresentations in different advertisements, explaining that it would hire twice as many new social workers as

new police officers, spend nine-billion dollars on social welfare programs, release drug dealers serving mandatory sentences, and protect the privacy of violent sexual predators who are released.

22. The NRA has also made extensive use of radio broadcasts to address legislative policy issues. In early 2000, for example, the NRA paid for a series of radio spots noting that the Clinton-Gore administration had finally acknowledged the need to increase prosecutions for existing gun laws. *See* Exhibit 11 (NRA 03664). The ads emphasized that this long overdue change in policy provided no justification for enacting more gun laws. Although these ads made reference to the "Clinton-Gore" administration and were run in the 30 days prior to Democratic primaries, they were not intended to influence the Democratic presidential primaries, given that the NRA was indifferent to outcome of the election contest between Al Gore and Bill Bradley.

[10 (11 PCS/ NRA 10)]

II. Defending The NRA Against Political Attacks

23. The NRA's paid programming on television and radio also serves a vital function in permitting the NRA to defend itself against political attacks. In recent years, many politicians have repeatedly leveled false and malicious accusations against the NRA. In the face of such assaults, the NRA has no choice but to defend itself. To the extent the attacks are aired on television and radio, it is critical that the NRA has access to paid political programming promptly to get its message out to the same audience that heard the charges made against the NRA.

24. In responding to politically motivated attacks by candidates, the NRA is at a distinct disadvantage to its attackers. Incumbent politicians, and even candidates for office, have far more access to free national media than does the NRA. President Clinton and Vice President Gore took full advantage of their ability to go on national television to

launch such attacks. Although the NRA does the best it can to defend itself, the NRA simply does not have the financial resources necessary to respond adequately through national television advertising campaigns. The large media companies have a tremendous financial advantage over the NRA and can spend far more than the NRA to promote their candidates and their issues. Additionally, given the media's general bias against the NRA and its positions, the NRA does not have a fair and adequate opportunity to get its side of the story out even when the NRA is afforded an opportunity to respond on television.

25. The most prominent recent example of this phenomenon occurred in the year 2000. During the course of that year, it became apparent that President Clinton and Vice President Gore had embarked upon a political strategy to demonize the NRA and try to poison the culture against the interests of gun owners. They hoped that these efforts would lead to further restrictions on gun ownership. In furtherance of this objective, President Clinton made ample [11 (11 PCS/ NRA 11)] use of his access to free national media time. An example illustrates both the types of attacks leveled at the NRA by politicians and the critical role that the NRA's ability to buy airtime played in permitting the NRA to get its side of the story out to the public.

26. On March 2, 2000, President Clinton went on NBC's Today Show ostensibly to address a recent tragic shooting in Flint, Michigan. The incident involved a child living in a crackhouse who found a stolen gun there and who then used it on a classmate. The Today Show deviated from its normal format by skipping the news and interviewing President Clinton for 15 minutes. *See* Exhibit 12 (NRA-ACK 17894). Although the interview began with a series of comments about the case in Flint, Michigan, the President quickly turned his attention to the NRA. He made several false statements during this interview. For example, he claimed that "the NRA is against anything that requires anybody to do anything as a member of society that helps to

make us safer." In short, President Clinton endeavored to lay the blame for the types of incidents that occurred in Flint on the NRA and its defense of Second Amendment rights. At no time was the President subjected to any questioning by Today Show host Katie Couric that would have exposed the false nature of his attacks on the NRA.

27. President Clinton's appearance on the Today Show amounted to a political mugging of the NRA. Although I was granted a short responsive interview on the Today Show, I was not given equal time, and I was subjected to hostile questioning throughout the interview. Based on my experience over the years, NBC's treatment of the NRA is typical of that of other television networks and other major media companies.

28. In order to get our side of the story out, the NRA had to develop a media strategy that centered upon a series of paid television advertisements that responded to President Clinton's outrageous misrepresentations about the NRA. To that end, I worked with Angus [12 (11 PCS/ NRA 12)] McQueen of Ackerman McQueen to produce and air a series of 13 commercials featuring Charlton Heston. *See* Exhibit 13 (NRA-ACK 00002). In these spots, Mr. Heston both defended the NRA's position on safety issues and questioned President Clinton's truthfulness.

29. The NRA did not have the funds necessary to launch a nationwide advertising campaign that would reach the same audience that heard President Clinton's interview and his false accusations against the NRA. Accordingly, we sought to develop an ad campaign that would elevate the controversy between the NRA and President Clinton to such a degree that I would be invited onto national media outlets and would thus be able to defend the NRA before a national audience. Critical to the strategy was our ability to reference the specific misrepresentations made by President Clinton and to refer to him by name. Our media campaign succeeded, and I was ultimately invited to appear on several nationwide news shows during which I was able to respond at

least in part to the President's assault on the NRA. Without access to paid media and without the ability to refer to President Clinton by name, the NRA would not have been able to gain access to the national television audience that had heard President Clinton's gross misstatements.

30. Another example of a media ambush on the NRA was the ABC News Special entitled "The Gun Fight" that ran on the eve of the 2000 general election. *See* Exhibit 14 (NRA-ACK 17893). Much of the show focused on the NRA's treatment of Bart Stupak, a member of Congress who represents rural Michigan. The show's host, Peter Jennings, portrayed Mr. Stupak as a stalwart defender of gun rights. The thrust of the piece was that the NRA had unfairly targeted Stupak for defeat because of one vote he had cast. Stupak was allowed to paint himself as a victim furthered by misrepresenting the positions he had taken. The NRA was not given an [13 (11 PCS/ NRA 13)] opportunity to clarify Stupak's actual positions. The end result was a "news" story that unfairly cast the NRA in an unfavorable light.

31. Politicians also use their campaign funds to attack the NRA. There are dozens of recent examples of such ads. *See* Exhibit 15 (service by facsimile). A recent example from the current election cycle illustrates the type of attacks to which the NRA is constantly subjected. Mark Shriver was a candidate in the Democratic primary for the 8th congressional district in Maryland. Both he and his opponent, Chris Van Hollen, attacked the NRA in a series of television commercials. *See* Exhibit 16 and 17 (service by facsimile). The most egregious of these assaults that I witnessed was contained in the following attack ad paid for by Shriver:

> Mark Shriver: I stood up on the floor of the House of Delegates this year and defeated a piece of legislation backed by the NRA that would have allowed convicted felons to own handguns. That's bad public policy. We shouldn't allow people who are convicted of

> domestic violence to own a handgun. We need trigger locks on our handguns, we need to eliminate the gun show loophole, we need to make gun licensing the law of the land. So I welcome the fight from the NRA because nothing would give me more pleasure than defeating the NRA.

Exhibit 16 (service by facsimile).

32. This is a gross misstatement given that the NRA does not support allowing convicted felons to carry firearms. The NRA should be able to defend itself against such falsehoods by responding directly to the attacker. And yet, given that the ad was aired during the 30 days prior to the Democratic primary, the Bipartisan Campaign Finance Reform Act ("BCRA"), if it were in effect, would have criminalized any response from the NRA in which Mr. Shriver was referred to by name.

33. Another example of this sort of attack is an ad that was run by Betty McCollum, a candidate for the House of Representatives from Minnesota. She ran the following ad in October 2000:

[14 (11 PCS/ NRA 14)

> Betty McCollum: I have an 8-year old friend. He told his mom and Dad he's afraid of guns, guns in school. This is wrong. Gun safety is plain, common sense. We need trigger locks, criminal background checks for every gun purchased and tougher penalties for anyone who sells a handgun to a minor. If it's a choice between catering to the NRA or protecting our children, that's an easy choice. In Congress, I'll fight

> for what matters to you because it matters to my family too.

See Exhibit 18 (service by facsimile). This ad attacks the NRA by creating the false impression that the NRA is not concerned with gun safety or the safety of children. Nothing could be further from the truth. And under the new law, as I understand it, the NRA will not be able to respond to the attacker by name. A representative sample of other similar attack ads against the NRA is attached as Exhibit 15.

34. For several reasons, it is utterly irrelevant that the Political Victory Fund can theoretically respond to such attacks on the NRA. First and foremost, the NRA and the Political Victory Fund are distinct entities. The attacks are aimed at the NRA itself and do not even mention the Political Victory Fund. Second, as a political action committee, the Victory Fund expends its funds to influence the outcome of federal elections. That is the purpose for which donors contribute to the Political Victory Fund. Given that the NRA and the Political Victory Fund were indifferent as to which candidate won the Democratic primary in Maryland's 8th congressional district, there is no basis for requiring the Political Victory Fund to spend dollars on ads referring to candidates on whom it is indifferent. When the NRA is merely defending its reputation, there is no justification for forcing it to spend dollars raised by the PAC. Third, candidates have two distinct advantages in this battle: (1) their access to friendly media coverage and (2) ability to draw upon their personal wealth to attack the NRA. Given this access to unregulated sums of money and air time, there is no justification for creating an unlevel playing field in which the NRA is effectively gagged and the Victory Fund is handcuffed by contribution limitations, while [15 (11 PCS/ NRA 15)] candidates can mount a major television campaign with a personal single check or a phone call to a media executive.

35. The NRA's PAC also has far more limited resources than the NRA itself. Many NRA members simply

cannot afford to make a contribution to the Political Victory Fund. The NRA's members are overwhelmingly comprised of ordinary middle class Americans. Through the years, innumerable members have told me that they would like to do more to help further the NRA's political agenda, but they simply cannot afford to give anything more than their membership dues of $25 a year. For many of these individuals, they must make sacrifices just to pay their annual dues. If these members are not permitted to pool their resources in the form of annual membership dues, they will effectively be excluded from the political dialogue that takes place on the Nation's airwaves. Thus, if only the NRA's PAC is permitted to speak in the weeks leading up to elections, those citizens with the fewest resources will be silenced and shut out of our democratic process.

III. Defending The NRA Against Media Attacks

36. In recent years, the media has increasingly worked with anti-gun advocates to smear the NRA. This entrenched hostility to the NRA is part of a broad, systemic bias against conservative causes that pervades the major media companies and their coverage of the news. This liberal bias distorts what is supposed to be objective news reporting by the major network broadcasters, as well as by the print media, by slanting the presentation of all news stories to portray conservatives as wrong-headed or extreme, while portraying a liberal perspective as moderate, reasonable, and mainstream.

37. This widespread prevalence of this liberal bias has recently been exposed in dramatic fashion by the publication of a book entitled *Bias: A CBS Insider Exposes How The Media* [16 (11 PCS/ NRA 16)] *Distort The News*, by Bernard Goldberg, who worked as a reporter for CBS News for twenty-six years. *See* Exhibit 19 (NRA-MDEE 0556-0831). This book chronicles in detail the extent of the liberal bias in the major media, the effect this bias has on the

way in which news is portrayed and hence upon the way in which the world is perceived by the viewing public, and the way in which the media insiders work towards keeping the fact of their bias hidden from the general public.

38. Another good source for describing the existence of liberal media bias is the Media Research Center. For example, this center published a Special Report on January 5, 2000, entitled "Outgunned: How The Network News Media Are Spinning The Gun Control Debate." This report, and its Executive Summary, have also been produced in this litigation, *see* Exhibit 20 (NRA 09730-09745). In this Special Report, the Media Research Center explains how a study of morning and evening news stories on ABC, NBC, CBS, and CNN over a two year period between 1997 and 1999 revealed the following: (1) 357 stories advocated more gun control, whereas only 36 opposed further gun control; (2) evening news shows favored gun control *eight times* more often than they opposed gun control; (3) morning news shows favored gun control *thirteen times* more often than they opposed gun control; (4) anti-gun soundbites appeared more than twice as frequently as pro-gun soundbites; (5) news programs were twice as likely to feature pro-gun control activists as guests than pro-gun rights activists; (6) themes that are considered pro-gun – such as the decline in federal gun prosecutions under the Clinton Administration, or the positive use of guns in self-defense – were barely covered in the 653 stories sampled.

39. An example of the collaboration between anti-gun politicians and the media can be seen in the coverage given to the Million Mom March, which occurred in the spring of 2000. The sponsors of that event worked closely with the Clinton White House and were able to gain enormous exposure through their access to free national media. Organizers of the Million Mom [17 (11 PCS/ NRA 17)] March repeatedly attacked the NRA. In response to this assault, the NRA produced and aired a program that examined the forces and influences behind the Million Mom March.

This broadcast was entitled "MMM/ Prosecution." Exhibit 21 (NRA ACK 00007).

40. The program criticized the Clinton Administration for pursuing new gun control measures rather than prosecuting criminal violations of laws already on the books. The program ran for nearly 30 minutes and aired on numerous occasions in various markets around the country. Charlton Heston introduced the first segment, which described various celebrities and politicians who want to confiscate the guns of ordinary citizens while ensuring that their personal bodyguards retain them. This first segment contrasted Rosie O'Donnell's insistence at the Million Mom March that "only police should have guns," with her bodyguard's application for a permit to carry a concealed handgun, and similarly contrasted Senator Dianne Feinstein's stance against carrying handguns with a permit she once held to carry a handgun for personal protection. The second segment cited a study by Syracuse University showing that federal firearm prosecutions had drastically declined by 44% between 1992 and 1998, and reported on crimes that resulted from failure to prosecute. The third segment then repeated the initial segment. The program contains limited reference to candidates for federal office. Specifically, the first segment says that "President Clinton, Hillary [then a candidate for the Senate], and Schumer" were all out there at the Million Mom March "for their own political gain," and the second segment chastises the "Clinton/Gore White House" for having "turned its back on real justice." The overarching purpose of this program was to generate new membership and support for the NRA and to ensure that its message was heard in response to prominent media campaigns against it. The program was not intended to influence a federal election.

[18 (11 PCS/ NRA 18)]

IV. Holding Politicians Accountable

41. The NRA also runs paid television and radio broadcasts to hold politicians accountable for their actions. Such broadcasts are the only way the NRA can inform the public about the discrepancies between candidates' words and their actions. Given that the general public's attention on important public policy issues is at its zenith during the weeks leading up to an election, the NRA's efforts to hold anti-gun politicians accountable for their actions is critically important during this period.

42. An example of the NRA's efforts to hold politicians accountable for their actions is the NRA's 30-minute broadcast detailing Al Gore's position on the Second Amendment. The Clinton-Gore Administration had been bashing the NRA throughout the entire year. This was part of their apparent political strategy to demonize and marginalize the NRA. It didn't work. And so Vice President Gore tried to flip-flop and portray himself as a pro-Second Amendment candidate just prior to the beginning of his general election campaign. In a statement published by the New York Times on August 10, 2000, one of Al Gore's top campaign spokesmen, Douglas Hattaway, stated that "we support Second Amendment rights and want to protect those rights for law-abiding gun owners and sportsmen, while promoting common-sense policy to keep guns away from kids and criminals." *See* Exhibit 22 (NRA 11330-11331). Remarkably, less than two weeks after making this statement, on August 22, 2000, the top constitutional lawyer in the Clinton-Gore Administration, Solicitor General Seth Waxman, unequivocally stated that it was the administration's position that individuals do not possess a Second Amendment right to keep and bear arms. Specifically, General Waxman's letter stated: " 'it must be considered as settled that there is no personal constitutional right, under the Second Amendment, to own or to use a gun.' " *See* Exhibit 23 (NRA-PVF 00468). Nevertheless, the Gore campaign continued to por[19 (11 PCS/ NRA 19)]tray their candidate as a proponent of the Second Amendment. When the NRA questioned this conten-

tion, the Gore campaign's operatives attacked the NRA's credibility. The Gore campaign's allies in the unions distributed leaflets denouncing the NRA and claiming that the NRA was distorting Gore's record. As the NRA did not have access to union membership rolls, the only way to defend ourselves against this attack was to buy airtime.

43. The NRA could not allow Al Gore to engage in such blatant hypocrisy. If he and his top lawyers thought that the Second Amendment was a dead letter, then the American people had a right to know about it. And none of the major media outlets were reporting this story. In the face of this reality, NRA produced a 30-minute broadcast that brought this information to light. *See* Exhibit 24 (NRA-ACK 00010).

44. In the broadcast, Ginny Simone, the reporter on all the broadcasts referenced earlier, traveled into areas with a heavy union presence and interviewed citizens, union members and their families. The interviews were neither scripted nor pre-arranged. The citizens in the broadcast expressed their candid belief that George Bush will protect their firearm rights whereas Al Gore will not, and many cited that issue as their central concern for the 2000 presidential election. In an intervening segment, I quoted from the Clinton Administration's position in the *Emerson* case, in which the then-Solicitor General stated the Administration's position that "the Second Amendment does not extend an individual right to keep and bear arms." And I explained that if Al Gore were to win the election and have the opportunity to appoint Supreme Court Justices such as "Hillary Clinton, Chuck Schumer, and Dianne Feinstein" who agree with his Justice Department officials regarding the scope of the Second Amendment, that would foreclose firearm owners from invoking any right under the Second Amendment. Charlton Heston then explains the importance of this issue to the upcoming election and urges voters to consider their [20 (11 PCS/ NRA 20)] freedoms in casting their vote. In the next segment, Charlton Heston quotes extensively from state-

ments Al Gore has made about firearm restrictions and his desire to impose new licensing requirements, explaining the problems and pitfalls associated with these approaches.

45. This program was designed to achieve many different purposes, including to respond to the union attacks on the NRA, galvanize the NRA's existing membership, attract new members, encourage donations, influence the presidential election in favor of George W. Bush, and present important information to the American public. It was spurred in large part by the representation of Al Gore's campaign that he intended to protect gun owners and their right to bear arms, and was designed to debunk that notion with accurate, documented information, and the candid perceptions of ordinary citizens focused upon the issue.

46. Although this program was aired in many battleground states, we also aired the program in California, Nebraska, and Montana where the outcome of the presidential election was not in question. *See* Exhibit 2. These airings plainly demonstrate that this broadcast was not solely an election ad, but rather spoke to a more fundamental point: the Second Amendment was under attack from a politician masquerading as a friend of this fundamental constitutional right.

47. We also ran portions of the full program as 30 second paid advertisements. Some of these "spots" were run with the tag line "Vote for George W. Bush." These ads were paid for by the Political Victory Fund. Ads that did not conclude with an exhortation to vote for or against a candidate were paid for by the NRA's Institute for Legislative Action, which is part of the NRA and is not a political action committee.

48. During the two decades that I have worked at the NRA, I am unaware of any coordination between the NRA and candidates for federal office with respect to television or radio advertising.

[21 (11 PCS/ NRA 21)]

V. Membership Drives

49. The NRA also broadcasts programs that are designed to increase its membership. In 2000, the NRA paid to air another 30-minute broadcast that was a tribute to the NRA's President, Charlton Heston. The program focused on his life and political involvement, touting him as a role model and inspiration to all Americans. *See* Exhibit 25 (NRA ACK 00006). The program described his patriotism and devotion to public life, especially his longstanding involvement with the NRA and advocacy of Second Amendment rights. It was aired on numerous occasions in various markets around the country. The first segment shows film footage of Charlton Heston and explains that, as President of the NRA, he now makes enormous personal sacrifices and subjects himself to withering attacks in trying to promote the NRA's views in hostile academic and media forums. The second segment consisted of unedited footage from Charlton Heston's acceptance speech upon being elected as NRA President for a third term. The third segment then repeats the initial segment.

50. During the short membership appeals that preceded and followed each segment, the program urged viewers to join the NRA and described the benefits of membership. For several seconds, the screen flashed an issue of the NRA's magazine "First Freedom" with Al Gore clearly depicted on the cover. In addition, the first segment, in praising Charlton Heston's personal courage, says that he has proven his willingness to debunk the hypocrisy and lies of the Clinton/Gore Administration. Finally, the second segment, consisting entirely of Charlton Heston's unedited acceptance speech, includes his passing comments that increasing sentiment against gun control "spells very big trouble for a man called Gore," and his closing remark, while holding a musket over his head, "from my cold, dead hands, Mr. Gore." This program was aired at numerous times throughout the country. The overarching purpose behind the program was to [22 (11 PCS/ NRA 22)] generate new members

and donations for the NRA. The program was not intended to influence the outcome of a federal election.

VI. Publications and Direct Mail

51. The NRA also communicates with its members and certain s segments of the general public through its publications and direct mail. NRA regularly publishes six magazines. Members may select to receive one of three of these magazines, America's First Freedom, American Rifleman, American Hunter, as a benefit of membership. American Rifleman is the oldest of the NRA publications and has been published by NRA for 117 years. It had an audited average monthly paid circulation for the six month period between January 1, 2002 and June 30, 2002 of more than 1.5 million copies. American Hunter is in its 30th year of monthly publication by NRA and had an audited average monthly paid circulation for the six month period between January 1, 2002 and June 30, 2002 of more than 1.1 million copies.

52. America's First Freedom is NRA's monthly news magazine devoted to news about legislation, public policy, and political activities related to the Second Amendment and the use and enjoyment of firearms by law abiding citizens. NRA began publishing America's First Freedom in 2000, and as of June 30, 2002, it had an audited average paid circulation for the six month period preceding that date of 635,580.

53. The other NRA magazines are Shooting Illustrated, Shooting Sports USA, and InSIGHTS. Shooting Sports USA and Shooting Sports Illustrated are published monthly and sold to subscribers and/or are available for purchase on public newsstands. InSIGHTS magazine is a benefit of membership to NRA junior members.
[23 (11 PCS/ NRA 23)]

54. The NRA also engages in extensive direct mailing campaigns. In 2000, the NRA spent approximately

$19 million to publish and distribute its magazines and approximately $29 million on direct mail.

55. The NRA's print media serve the same purposes as its television and radio broadcasts: educating the public, opining on the wisdom of specific acts of legislation, defending the NRA against attacks by politicians and the media, raising membership and contributions, and influencing federal elections. As with its broadcast programming, the NRA's print communications frequently refer to candidates for federal office by name throughout the year, including in the 30 days prior to a primary and the 60 days prior to a general election.

VII. The NRA Funds Itself From Individual Contributions

56. The NRA is a voluntary membership organization. NRA members join because of our organization's commitment to preserving Second Amendment rights. In 2000, the NRA had more than 4 million members. Annual membership dues, ranging from $25-$35 per year, make up the vast majority of our funding. In the year 2000, for example, we received over $100 million in individual membership dues. We received approximately another $40 million in additional contributions from individuals. The average contribution from individuals amounted to $30 per year. Thus, the NRA's financial strength is derived from the pooling of resources of millions of ordinary working folks who seek to preserve their right to keep and bear arms.

57. The NRA receives only a negligible amount of contributions from corporations. In the year 2001, the NRA received less than $300,000 in corporate contributions.

58. Revenues received from other NRA activities do not serve as a source of funds for the NRA's television and radio broadcasts. Specifically, the revenues derived from magazine advertising are not sufficient to cover the cost of producing these magazines. Likewise, sales of NRA memorabilia are not used for producing or airing of television or

radio advertising because the revenue from the sale of [24 (11 PCS/ NRA 24)] NRA memorabilia does not even cover the cost of producing and distributing these items.

59. The revenue that the NRA receives from credit card affinity programs and insurance programs that are available to NRA members reflect the members' desire to support the activities of the NRA. Members are clearly aware that when they sign up for an NRA credit card or insurance through an NRA-sponsored provider that the NRA will receive financial remuneration. Thus, these modest revenues are therefore the functional equivalent of contributions from individuals.

60. The NRA's net revenues available for political speech overwhelmingly are derived from individual contributions. Corporate contributions account for less than 1 percent of funds available for broadcast programming. Even assuming that revenues from affinity programs and subtenants are corporate contributions, over 94% of the funds available to the NRA for broadcasting speech are derived from individual contributions.

61. Starting in 2003, the NRA will put in place measures to ensure that all of the funds expended on television and radio broadcasts are derived *entirely* and exclusively from contributions from individual members. We will ensure that all funds derived from corporations will be segregated from contributions from individuals. Thus, we will pay for our television and broadcast programming exclusively out of funds provided from individual members.

VIII. BCRA's Disclosure Requirements Threaten the Privacy Interests of NRA Members

62. The disclosure requirements in BCRA will invade the privacy interests of all affected NRA members. Through the years, hundreds, if not thousands, of NRA members have told me that they do not wish to disclose their contributions to the NRA. With all the hostile [25 (11 PCS/

NRA 25)] criticism that has been leveled at the NRA and all the misinformation that has been disseminated by the media about the NRA in recent years, it is natural that people would fear repercussions either at work or in their community from such disclosure. The people that have voiced these fears to me come from all walks of life. They include a lawyer who worked at the Department of Justice during the Clinton years, a Secret Service agent, teachers, police officers, and workers in Hollywood. Based on my conversations with members through the years, I firmly believe that there is a large segment of the NRA membership and the public at large who share these privacy concerns. If, as a result of BCRA, members are forced to disclose their identities, I firmly believe that many will not make contributions that trigger such disclosure.

63. In the course of this litigation, the NRA and I were contacted by the lawyers at Cooper & Kirk and asked if we could produce copies of the NRA and VICTORY FUND's Bylaws and of the NRA's Certificate of Incorporation. I can testify to the fact that true and complete copies of these Bylaws and Certificate of Incorporation have been produced to the lawyers at Cooper & Kirk. I understand that these copies were also produced to the defendants in this litigation, and have been marked with the Bates range NRA 1469-1527, and NRA 2926-2977 are Exhibits 1 and 26, respectively.

64. In the course of this litigation, I have reviewed a copy of an article that ran in *The New York Times* on August 10, 2002, entitled "The 2000 Campaign: The Ad Campaign," which I first read when it ran during the 2000 election cycle. I can testify that the lawyers and Cooper & Kirk have provided me with a true and correct copy of this article; and it is my understanding that an identical copy has been produced to the defendants in this litigation, marked with the Bates range NRA 11330-11331.

* * *

DECLARATION OF SENATOR JOHN MCCAIN

[DEV 8, Tab 29]

The affiant, having been duly sworn, deposes and says:

1. My name is John McCain. I have spent most of my adult life in public service and many years holding elected office. From 1958 through 1982, I served in the U.S. Navy. In 1982, I was elected to the U.S. House of Representatives. I served two terms in the House before being elected to the Senate in 1986. During my four years as a Congressman, sixteen years as a U.S. Senator, and as a presidential candidate in the 2000 presidential election, I have had extensive opportunities to observe the electoral process and the way political campaigns are financed. During my 20 years as a Member of Congress, I have seen our campaign finance system change substantially and have seen the harmful effects that these changes have had on the American public's opinion of lawmakers. Today, as a result of this system, all of us are tainted by the appearance of corruption. The same was not the case 20 years ago.[2]

2. Almost 100 years ago—in 1907—the United States Congress, under the leadership of President Theodore Roosevelt, enacted a law banning corporations from contributing funds to political campaigns. In 1947, Congress also banned unions from making these donations. In 1974, Congress limited individual contributions to candidates and parties. The Supreme Court has upheld the constitutionality of each of these contribution restrictions. In spite of these laws, however, we have been operating under a campaign finance system where federal candidates and elected officials solicit unlimited soft money contributions from unions, corporations and individuals, and these funds are spent in ways that directly influence the outcome of federal elections. In addition to making such contributions to political parties, corporations and unions are spending their money on sham

issue ads that pretend to address issues but in fact have the purpose and effect of influencing federal elections.

3. A large number of highly respected former elected officials agree that the current system of campaign finance is in need of repair and should be fixed now, starting with a ban on soft money. Former presidents George H.W. Bush, Jimmy Carter and Gerald Ford have each called for such a ban, and presidents Carter and Ford have argued that "the honor of public service is being tarnished by a system of campaign funding that has made many Americans lose faith in the concept of public service . . . ." *See* Attachment A. Senator Barry Goldwater, a man known for his independence and integrity, argued for more stringent reforms than the ones enacted by the Reform Act. Also in my own party, former Senate Majority Leader Howard Baker, former Senate Majority Whip Alan Simpson, former Senator and Republican National Committee Chairman Bill Brock, and former Minority House Leader Bob Michael all have advocated a soft money ban.

4. The growth of the soft money loophole has been staggering. In the 1992 election cycle, the two parties raised $86 million in soft money. This amount roughly tripled in the 1996 [3] election cycle and nearly doubled again in the 2000 election cycle, climbing to a staggering $495 million. I have heard opponents of reform argue that this flood of soft money does not corrupt or even appear to corrupt politicians or the political process. They argue that soft money contributions are made to political parties, not to candidates, and thus any exchange of favors for contributions is unlikely. My experience in the Senate tells me that this view does not correspond to today's realities.

5. Opponents of reform frequently ask reform proponents to cite examples of "quid pro quo" corruption. I believe, based on my experience, that elected officials do act in particular ways in order to assist large soft money donors and that this skews and shapes the legislative process. As Representative Eric Fingerhut has noted: "The public will

often look for the grand-slam example of the influence of these interests. But rarely will you find it. But you can find a million singles . . . regulatory change, banking committee legislation (to cite a committee that I served on) . . . . Think of the committee and you can think of the interest group or the company that will have an interest. . . ." Martin Schram, *Speaking Freely*, at 93. This statement accurately reflects my experience.

6. At a minimum, large soft money donations purchase an opportunity for the donors to make their case to elected officials, including the President and Congressional leaders, in a way average citizens cannot. Many legislators have been in situations where they would rather fit in an appointment with a soft money contributor than risk losing his or her donation to the party. Legislators of both parties often know who the large soft money contributors to their party are, particularly those legislators who have solicited soft money. Members of Congress interact with donors at frequent fundraising dinners, weekend retreats, cocktail parties, and briefing sessions that are held exclusively for large donors to the party. Donors or their lobbyists often inform a particular Senator that they have made a large donation. When, as a result of a Member's [4] solicitation, someone makes a significant soft money donation, and then the donor calls the Member a month later and wants to meet, it's very difficult to say no, and few of us do say no.

7. The parties encourage Members of Congress to raise large amounts of soft money to benefit their own and others' re-election. At one recent caucus meeting, a Member of Congress was praised for raising $1.3 million dollars for the party. James Greenwood, a Republican Congressman from Pennsylvania, recently told the *New York Times* that House leaders consider soft money fundraising prowess in assigning chairmanships and other sought-after jobs. He stated, "I cringe at the notion that the would-be chairs of these committees are engaging in a mad dash to gather as much soft money as possible, then thinking about the potential

obligations incurred by asking for and receiving these six-plus-figure contributions from the very entities being regulated by these committees." *See* Attachment B. I share Mr. Greenwood's concerns. Congressional leaders also use soft money to enforce party discipline and loyalty to their views. At times, when Members seek to support legislation their congressional leaders oppose, they are threatened with the prospect that their leaders will withhold soft money being spent on their behalf.

8. In June 1998, it was widely reported that during the Senate's consideration of a bill entitled the National Tobacco Policy and Youth Smoking Reduction Act (S. 1415), U.S. Senator Mitch McConnell, then head of the National Republican Senatorial Committee, talked at a Republican Senators' policy lunch about political advertising by major tobacco manufacturers. In a complaint it filed on June 29, 1998 with the Federal Election Commission, the Campaign for Tobacco-Free Kids characterized Senator McConnell's communications as follows: "Based upon reports that have been widely published in the news media, only hours before Republican Senators were due to vote for or against cloture on S. 1415, Senator Mitch McConnell informed his colleagues in a closed door meeting that if they voted to kill the tobacco bill, the major [5] tobacco manufacturers were promising to mount a television ad campaign to support those who voted against the bill." (Tobacco-Free Kids complaint and accompanying press release are available at http://www.commondreams.org/pressreleases/June98/062998c.htm). I was present at the meeting and this is an accurate report of what Senator McConnell said. This episode graphically indicates that corporate soft money is widely used to influence legislative votes.

9. Several years ago, Congress passed legislation purportedly deregulating the telecommunications industry in order to encourage competition and lower costs to the consumers. The Senate Commerce Committee, on which I serve, held hearings on the issue. Every industry that would

be affected was heard from, and while their interests varied, they had two things in common: first, they hoped to gain entry into their competitors' business while keeping competitors out of theirs; and second, they were generous donors to members of the committee and to the political parties, having given tens of millions of hard and soft money contributions during the time the bill was being developed. During consideration of the bill in the Committee, on the Senate floor, and in the Conference Committee, Members of Congress who were involved in crafting the legislation were inundated with requests for meetings by soft money contributors -- and many Members met with these contributors. While the halls and offices of Congress were overrun with representatives of telecommunications interests that had contributed soft money, the public interest had few lobbyists and no campaign contributions to protect it. The legislation that was finally adopted by Congress reflected the effects of soft money contributions on the political process. The process was essentially hijacked by large soft money contributors and their lobbyists. The legislation, which dealt with issues of interest to big money donors, was poorly conceived and filled with internal inconsistencies designed to appease these competing donors rather than to serve the public interest. Regardless of whether the [6] interested donors received a "quid pro quo" for their donation, the entire process was skewed by these large contributions and there was clearly an appearance of improper influence.

10. The recent debate over the expensing of stock options provides another example. When the Senate recently considered the Sarbanes-Oxley corporate governance bill, I attempted to modify the bill to require companies to account for stock options by expensing them on their income statements -- a proposal that has considerable support among preeminent economists and businessmen including Alan Greenspan and Warren Buffett. High tech executives who have donated generously to both the Democratic and Republican parties in recent years opposed the expensing

proposal and it was reported that it was they who succeeded in defeating it. According to newspaper accounts, Silicon Valley venture capitalist John Doerr, who has given $619,000 to the Democratic Party since 1999, spoke by phone to the Senate Democratic leadership and urged them to oppose my stock options proposal. The Senate Democratic leadership then used a parliamentary procedural device to block a vote on it. Again, the legislative process was, or at least appeared to be, adversely and unfairly influenced by large soft money contributions, demonstrating that large contributors often influence or are perceived to influence not only what goes into a bill, but also what stays out.

11. In yet another example from this year, a bill recently passed by the Senate to get generic drugs to market faster has stalled in the House, reportedly because of pressure exercised by the White House and the Republican House leadership. According to the Congressional Budget Office, the bill could save consumers about $60 billion over the next ten years. Not surprisingly, the pharmaceutical industry -- which opposes the bill -- has reportedly vastly increased its campaign contributions in order to stall the legislation's passage. While the bill was pending, the NRSC and NRCC held a large gala fundraiser to raise almost $30 million in largely soft money contributions, a substantial portion from pharmaceutical companies. According to [7] newspaper reports, among the largest contributors to the gala were GlaxoSmithKline PLC ($250,000), PhRMA ($250,000), Pfizer ($100,000), Eli Lilly & Co. ($50,000), Bayer AG ($50,000) and Merck & Co. ($50,000). While their large and timely contributions do not prove a "quid pro quo," once again the appearance that large soft money contributors have disproportionate influence is overwhelming.

12. Even my colleague Senator McConnell has recently complained about the influence that union contributions to Democratic candidates and officeholders have on policy outcomes. On October 1, 2002, Senator McConnell argued that "the homeland security bill is being held up because

some labor unions want to put their special interests ahead of the collective interests of the Nation's security." He then asked:

> "So why are our colleagues on the other side advancing the labor union's agenda? Well, let's take a look at this chart. Four of the five major public sector unions who are publicly pushing for the Lieberman bill have showered over 93 percent of their campaign contributions to Democrats. The fifth contributed 87 percent. Here are the top contributors supporting the Lieberman bill: American Federation of State, County, and Municipal Employees contributed 99 percent of their funds to Democrats; American Federation of Teachers, 99 percent; International Association of Fire Fighters, 87 percent; American Federation of Government Employees, 93 percent; and National Treasury Employees Union, 94 percent." *See* Attachment C.

Senator McConnell's statements imply that contributions do influence policy or lead to the appearance of improper influence. Even if Senator McConnell's statements pertain only to hard money contributions, if relatively smaller hard money donations actually or apparently influence policy, the immense soft money donations that the Reform Act bans are even more likely to actually or apparently influence legislative outcomes.

13. Soft money from corporations, unions, and wealthy individuals is also used to evade the law when political parties run sham issue ads using soft money. The Thompson Committee found rampant abuses by both campaigns in the 1996 elections. Both presidential candidates [8] raised soft money that was spent by their parties on sham issue ads to support their presidential campaigns. Both presidential

campaigns openly assisted their party committees in creating ads that were designed to support their candidates. During the 1999-2000 election cycle, these abuses continued and included congressional races.

14. In 1996, I promoted Senator Bob Dole's bid for President. I communicated with Senator Dole about his campaign, including the political advertisements he was running and those the Republican Party was running on his behalf.

15. One example of an "issue advertisement" the RNC financed in 1996 with soft money is a Bob Dole commercial entitled "The Story," which movingly depicts Senator Dole's recovery from life-threatening wounds he sustained in World War II. On ABC News, Senator Dole described how the RNC was able to disguise the ad as issue advocacy that can be paid for with soft money: the ad "never mentions the word that I'm -- it never says that I'm running for president, though I hope it's fairly obvious, since I'm the only one in the picture!" *See* Attachment D. As a man of integrity, Senator Dole had a hard time not stating the obvious. His comments demonstrate how the parties circumvent federal contribution and spending limits by running candidate ads under the guise of "issue advocacy."

16. Likewise, in 1996, the AFL-CIO reportedly spent $35 million on an "issue ad" campaign designed to restore a Democratic majority in the House. It ran ads in 44 Republican districts, spending an average of $250,000 to $300,000 on media in the districts of the 32 House Republicans it targeted. According to a *New York Times* article, Steve Rosenthal, political director of the AFL-CIO, provided a frank assessment of how ineffective campaign finance laws have become when he discussed these ads with the *New York Times* and said: "If somebody handed me a magic wand and said there is no election law, I would do exactly what I am doing now.'" *See* Attachment E. The National Republican Congressional Committee filed a complaint [9] with the Federal Election Commission about

this AFL-CIO initiative, arguing that "the AFL-CIO is using a huge general treasury to unfairly influence the outcome of elections" by starting a "massive TV advertising campaign." The complaint explains that while the AFL-CIO ads did not specifically use the "magic words" such as "vote for" or "defeat," "any informed American clearly knows that the purpose of these ads is "expressly advocating" defeat of the Republican who is the subject of the ad." *See* Attachment F. I agree with what the NRCC then said. What the Republican party committee is now saying is completely inconsistent with that and regrettably very wrong and misguided. This too shows the corrupting effect of soft money -- once the NRCC (as well as the other Republican and Democratic national party committees) became more and more dependent on soft money, they appeared willing to say or do almost anything.

17. Additionally, according to a complaint filed by the Kentucky Republican Party, the Kentucky Democratic Party allegedly spent $300,000 in a last-minute, soft-money television advertising campaign in late 1990 to assist Democratic Senate candidate Harvey Sloane, whose campaign had nearly exhausted its financial resources. The Kentucky Republican Party complaint states that a "tape of the ads themselves demonstrate conclusively that the purpose of this activity is to influence a federal election" in assisting Mr. Sloane against his opponent, Senator Mitch McConnell. Again, I agree with the position the Kentucky Republican Party then took. Senator McConnell knew of the complaint, telling a reporter that it was "going to be a landmark case," and expressing his "concern[] that soft money, which in the past has been more prevalent in presidential elections, is 'seeping into Congressional races.'" *See* Attachment G.

18. During my 1998 Senate reelection campaign, the tobacco industry ran supposed "issue ads." These ads purported to address comprehensive tobacco legislation, an issue of national significance. In fact, however, they appear to have been run to influence my 1998 [10] reelection campaign in Arizona, and a rumored Presidential campaign

by me in 2000, as they were shown only in Arizona, Iowa and New Hampshire; that is, my home state, and the first two states to be contested in the Republican presidential primary.

19. Federal election law bars unions and corporations from making direct contributions to candidates and from making expenditures for communications that influence federal elections. However, by sponsoring their own putative "issue ads," they circumvent this law. The electioneering communications provision would restore the original intent of the law: to keep a tidal wave of union and corporate money out of federal elections.

20. Opponents of reform argue that the parties are being treated unfairly and will be irreparably damaged by the Reform Act. I personally believe that the parties were stronger and more vibrant when I first ran for Congress in 1982, when they relied on barbeques and volunteers as a way to get ordinary citizens involved in the political process. Due to the 1990s' wave of soft money, the parties now rely in significant part on paid consultants and TV ads instead of volunteers and activists, all with little success in strengthening parties. In Arizona, each of the major parties lost over 2% of their registered voters in the last election alone. Only the number of voters registered independent has risen, from 11% ten years ago, to more than 20% today. *See* Attachment. H. Additionally, it is difficult for me to understand why voter activities cannot be financed with the immense amounts of hard money the political parties raise. In the 2000 election cycle, the two major parties nationally raised almost $750 million in hard money. To date, in the 2002 election cycle, the parties have already raised 12% more hard money than they had at the same point in 2000. In my view, the Reform Act will cause the parties to be more responsive to their grass roots than they have been in recent times.

21. Soft money is often raised directly by federal candidates and officeholders, and the largest amounts are often raised by the President, Vice President and

Congressional party [11] leaders. National party officials also often raise these funds, in large part by promising and providing donors access to federal officeholders and candidates. Soft money contributions are also given directly by donors to state parties to be used to influence federal elections. *See* Attachment I. An appearance of impropriety arises when soft money donors seek, and party officials and federal officeholders and candidates provide, access to federal officeholders and candidates for these large donors. Given the control that federal officials exercise over national party committees, and the close ties between those committees and federal officials, the risk of corruption or its appearance from large contributions to those national party committees exists regardless of who raises the money or what it is used for. Similarly, given the close ties between state parties on the one hand and national parties and federal officials on the other hand, soft money contributions to state parties that are spent on federal election activities create a risk and appearance of corruption. By banning soft money for national parties, and also for national party officials acting on behalf of their parties, the new law provides a clean break approach for the national parties that have been a core part of the soft money problem. Under the law, national party officials are not covered by the ban if they are not acting on behalf of their national parties.

22. While opponents of this bill sometimes argue that soft money helps challengers, in my experience that is not the case. The parties generally focus their soft money spending first on taking care of the parties' current officeholders and on the candidates running for open seats and after that on the challengers running against incumbents.

23. The entire function and history of political parties in our system is to get their candidates elected, and that is particularly true after the primary campaign has ended and the party's candidate has been selected. At that point in time, political parties and their candidates generally communicate and coordinate on a regular basis on a variety of topics such

as fundraising, strategy, opposition research, polling data, advertisements and message, and voter [12] mobilization. The idea that a party could make both "coordinated" and "independent" expenditures once the party has nominated a candidate, is not sensible.

24. While the relationship between candidates and political parties is uniquely intertwined, there have also been situations where federal candidates and political parties coordinate with outside groups. This coordination can occur in many ways -- sometimes directly, but often indirectly. For example, political consultants who produce sham issue ads on behalf of labor unions or business groups also can work for federal candidates for office in the same districts where the issue ads are run. These consultants can function as conduits of information between advocacy groups, the parties, and federal candidates -- sharing polling data, opposition research and message advice among all three. In addition, staff from advocacy groups may sometimes leave to join campaigns of candidates for federal office, providing yet another back channel of information between the advocacy groups and candidates. Finally, the political parties may also funnel information from candidates to advocacy groups as the Democratic Party did for labor unions and Democratic candidates in the 1996 and 2000 cycles, and the Republican Party did for business groups and Republican candidates in the 1996 and 2000 cycles. *See* Attachment J.[13]

25. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

[1(2 PCS/McC 001)]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, et al., Plaintiffs, v. FEDERAL ELECTION COMMISSION, et al., Defendants.	Civ. No. 02-0582 (CKK, KLH, RLL) CONSOLIDATED ACTIONS

AFFIDAVIT OF SENATOR MITCH MCCONNELL

MITCH MCCONNELL, being first duly sworn, deposes and says:

1. I am the senior United States Senator from the Commonwealth of Kentucky and a member of the Republican Party. I attest to the truth and accuracy of the matters set forth in this affidavit on the basis of my own personal knowledge.

2. I have been active in the Republican Party at the local, state, and national level throughout my adult life.

3. At the local level, I was a member of the Executive Committee of the Jefferson County Republican [2(2 PCS/McC 002)] candidates for the Greater Louisville Council (newly-merged, city-county government of Jefferson County, Kentucky).

4. At the state level, I have served since 1985 as a member of the State Central Committee of the Republican Party of Kentucky. During this time, I have actively engaged in activities whose design and effect have been to strengthen the Republican Party of Kentucky at the state and local level. In 1999, I played an integral role in persuading state Senators Daniel Seum and Robert Leeper to switch from the Democratic Party to the Republican Party, which gave Republicans control of the Kentucky Senate for the first time in history.

5. I routinely participate in events to help state and local Republican candidates and state and local Republican party committees. For example, I participated in an election strategy conference call with state Senator Leeper on July 5, 2002; headlined a state party fundraiser to benefit state Senate candidates on August 15, 2002; participated in a fundraiser for a state Senate candidate on August 20, 2002; and attended a rally for the Republican candidate for judge-executive in Butler County, Kentucky, on September 28. This coming weekend, I will attend a breakfast for the Republican Party of Jessamine County, Kentucky (Oct. 5), and headline a fundraiser for Republican state House candidates (Oct 6).

6. My commitment to the Republican Party at the state and local level is longstanding and well-recognized. At a statewide Kentucky Republican Party dinner on Feb. 16, 2002, I was described as "the architect of the modern-day Republican Party" and honored by the naming of the Kentucky Republican Party headquarters as "The Mitch McConnell Building." I attended the 1980, 1984, 1988, 1992, 1996 and 2000 Republican National Conventions as a voting delegate. [3(2 PCS/McC 003)]

7. I was elected to the United States Senate from Kentucky in 1984, and reelected in 1990 and 1996. I am currently a candidate for reelection in November 2002.

8. I am the former chairman and current ranking member of the Senate Committee on Rules and Administration, which has jurisdiction over federal election law. Since my election to the Senate, I have been a member of the National Republican Senatorial Committee ("NRSC"), which promotes issues and supports the campaigns of Republican candidates on the federal, state, and local level. I chaired the NRSC during the 1998 and 2000 election cycles. During my tenure as NRSC chairman, I was involved in raising money for funds not subject to the restrictions and prohibitions of federal law. These funds were used for the purpose of voter registration, voter identification, get-out-the-vote activities, issue advocacy, building funds, and national support for state and local candidates. For example, during my tenure as NRSC Chairman, I directed nonfederal NRSC contributions to dozens of state and local candidates in compliance with the regulations and reporting requirements of state law, including: the Virginia Republican gubernatorial candidate, Jim Gilmore, in 1997; the California Republican gubernatorial candidate, Dan Lungren, in 1998; and the Republican candidate for mayor of Warwick, Rhode Island, Scott Avedisian, in 2000.

9. In my capacities as federal officeholder, candidate, fundraiser, and party member, I am, and will continue to be, injured by the Bipartisan Campaign Reform Act of 2002 ("BCRA").

10. The BCRA will substantially impair my activities (and the activities of those construed to be my agents) with respect to national political parties, state and local political parties, and state and local candidates. [4(2 PCS/McC 004)]

a. As a federal officeholder, I will no longer be able to raise money not subject to the BCRA's restrictions (so-called "soft money") for the purpose of voter registration, voter identification, get-out-the-vote activities, issue advocacy, building funds, and national support for

state and local candidates. As set forth above, I have been involved substantially in raising money for each of these activities in the past, and would do so in the future, but for the BCRA.

b. As a member of the Republican Party, the National Republican Senatorial Committee, and the State Central Committee of the Republican Party of Kentucky, I could be considered an agent of the Republican National Committee and thus be banned from raising any money for state and local political parties or state and local candidates under the BCRA. Moreover, had the BCRA been in effect during my four years as Chairman of the NRSC, I would have been federally prohibited from raising any money for state and local parties or state and local candidates. As set forth above, I have been involved substantially in raising money for state and local political parties and state and local candidates in the past, and would do so in the future, but for the BCRA.

c. The BCRA prohibits federal officeholders from raising any so-called Levin funds for state and local parties to support, among other things, grassroots activity, such as voter registration within 120 days before the day of either the primary or general election and get-out-the vote efforts. I have been involved substantially in raising money not subject to the restrictions, prohibitions and reporting requirements of federal law for the purpose of supporting activities such as voter registration within 120 days before the day of either the

[8(2 PCS/McC 008)] "lowest unit rate" for the dissemination of these messages to viewers in Kentucky solely as a result of their content. Because I believe it is important for Kentucky voters to have as much information as possible about the qualifications of those who choose to run for the office of United States Senator, I intend to run similar ads in campaigns in the future and will be subject to the BCRA's discriminatory penalty for doing so.

13. During my 18 years in the United States Senate, I have met with thousands upon thousands of Americans with whom I have shaken hands, posed for photographs, answered questions, and discussed legislative issues. The overwhelming majority of these meetings were with people who are not contributors to the Republican Party at the national, state or local level. In fact, I typically am unaware of the contribution history of individuals with whom I meet. Additionally, meetings with soft money contributors to the Republican Party are not only fewer, but also typically larger and less conducive to a discussion of legislative issues than most of my meetings in a given week.

14. During my 18 years in the United States Senate, I have never witnessed any colleague who changed his vote or took any official action as a result of a federal contribution or a nonfederal donation to a political party at the national, state or local level.

/s/
MITCH McCONNELL
UNITED STATES SENATOR

[caption omitted]

DECLARATION OF DONNA MCDOW

I, Donna McDow, hereby declare under penalty of perjury of the State of Alabama:

1. I am a citizen of the United States and a resident of the State of Alabama.

2. I am above the age of 18, and I am competent to testify to the truth of the matters asserted in this Declaration.

3. I am married to Tim McDow, and we are the parents of Hannah and Isaac.

4. Hannah is sixteen years old, and was born on January 23, 1986.

5. Isaac is fourteen years old, and was born on March 16, 1988.

6. As a family we have chosen to provide for Hannah's and Isaac's education at home, rather than by sending them out to a local public or other school.

[end of page 1]

7. As a family, we consider citizen involvement in government, legislative processes and politics to be an important duty.

8. All of our children have attended and/or participated in the activities of Teen Pact, beginning with our oldest daughter, who, although she has not participated as a student, has served as a chaperone.

9. In addition to attending Teen Pact functions, I have served as a "staff mom" to help out with chaperoning and transportation and other support activities.

10. Hannah and Isaac have been involved in campaign work to support candidates that shared our values, beliefs and opinions.

11. I am aware that legal limits on the amount of money that I can give to a candidate for federal office have been enacted by Congress.

12. I am also aware that federal law prohibits me from giving money to a candidate for federal office in the name of another, even in the name of one of my children.

13. I have never used my children's names, or any other person's, in making a political donation, in order to avoid limits that the law places on my ability to support candidates of whom I approve.

14. Both Hannah and Isaac have money that is under their own direction and control, that they have earned, or received as a gift.

15. Hannah and Isaac control their money, and choose whether and how to spend it.

[end of page 2]

16. Of course, they do consult with their dad and me about how they spend money, and we have given them guidance as we thought appropriate.

[subscription and signature omitted]

[caption omitted]

DECLARATION OF HANNAH MCDOW

I, Hannah McDow, hereby declare under penalty of perjury of the State of Alabama:

1. I am a citizen of the United States and a resident of the State of Alabama.

2. I am a minor, 16 years of age, and was born on January 23, 1986.

3. Although I am not an adult, I understand that it is important to speak truthfully about the facts that I know, and admit honestly when I do not know something; I understand that not telling the truth in this statement would be a wrongful thing, and that I have the duty under the law to tell the truth.

4. Although I am not an adult, I understand the difference between facts and fantasy, and that my duty in making this statement is to testify to facts, and to avoid making up things that I cannot remember or do not know.

[end of page 1]

5. My parents are Tim and Donna McDow.

6. I am their third child.

7. We live in Shelby County, Alabama.

8. I am home-schooled, and this year I will be starting into the eleventh grade.

9. In addition to my home-school studies at home about civics, government and history, I have learned about legislation and politics, by attending training programs sponsored by Teen Pact.

10. Teen Pact is an organization that teaches Christian students about the work of legislators and lawmakers, and about the basic operation of the political process in our country and our states:

a. Teen Pact teaches kids about state legislation and political activities.

b. We listen to speakers, study materials, and have activities that allow us to look close up at legislative and political activities on the state level.

c. Also, we interviewed lobbyists at the legislature, and we heard from some legislators, and had the opportunity to ask them questions.

d. Participating in the Teen Pact programs has given me an understanding of how state legislatures work, including the process in the legislature and the outside activities of lobbyists and others who influence legislation.

e. In addition to attending the Teen Pact program in Alabama, I have also served on the staff of the program both in Alabama and in other States, and have participated in other Teen Pact programs.

[end of page 2]

f. I have become interested in government, politics and legislation, and the training at Teen Pact has increased my interest in these subjects, as well as my understanding.

11. As a result of my learning about legislation, government and politics, I have been involved in helping certain candidates for election in their campaigns.

12. I have volunteered with a campaign and assisted a candidate by assembling yard signs for distribution by his campaign.

13. I have also traveled out of state to help candidates by doing door-to-door campaigning in support of their candidacies.

14. I am a Christian.

15. By that, I mean that I have accepted the gift of salvation that comes through Jesus Christ and His death on the cross.

16. As a Christian I would like to spread the faith inside the legislative process, and hope that the result of that will be to affect our country, change its direction, and hopefully,

cause it to end legalized abortion.

17. Even more important than what I think, I know that the Bible teaches us to be good stewards of all the things that have been entrusted to us by God; from that teaching in the Bible I believe that we have the responsibility to be involved in the political process and the campaign process in order to make sure that we are being faithful stewards of God's gifts to us.

18. I also believe, as a principal of my faith, that it is important for persons who are followers of Christ to be involved in politics and in governing our Nation.

19. I actively research and study the candidates for election to various offices of

[end of page 3]

interest to me, asking questions of others and studying information I obtain from their campaigns and on the Internet.

20. As I understand the new campaign reform law, after November 5, 2002, until I reach my eighteenth birthday, I will not be allowed to give my money to candidates for elective federal office, including candidates for the Presidency, for the Senate and for the House.

21. In addition, as I understand it, after November 5, 2002, until I reach my eighteenth birthday, I will not be allowed to give money to any committees of political parties.

22. Being barred from supporting candidates who share my beliefs, opinions, and views, deprives me of the ability that I currently have to give money to such candidates, and takes away a means I have of expressing two different things: my support for the candidate, and my association with the candidate toward common goals.

23. As things stand now, I am free to donate money to a candidate of my choosing, and in doing so, I am able to express my support for that candidate, and my affiliation

with his or her beliefs, opinions and views.

24. Although I am young, I do have my own money, that is under my direction and control.

25. I work as a secretary in the office at our church, and have income regularly from that job.

26. I have a savings account, but I also have a checking account and I use that to spend the money I earn as I choose.

27. I plan and intend to give money to candidates for federal office and committees of political parties, as I find those candidates and committees that I can support consistent with my

[end of page 4]

faith in Christ.

28. My parents have never forced me to spend my money in one way or another, except responsibly. If I wanted to do so, I could spend it in many ways; but when the new law goes into effect, one way I will not be free to spend my own money is to support federal candidates with whom I agree.

[subscription and signature omitted]

[caption omitted]

DECLARATION OF ISAAC MCDOW

I, Isaac McDow, hereby declare under penalty of perjury of the State of Alabama:

1. I am a citizen of the United States and a resident of the State of Alabama.

2. I am a minor, 14 years of age, and was born on March 16, 1988.

3. Although I am not an adult, I understand that it is important to speak truthfully about the facts that I know, and admit honestly when I do not know something; I understand that not telling the truth in this statement would be a wrongful thing, and that I have the duty under the law to tell the truth.

4. Although I am not an adult, I understand the difference between facts and fantasy, and that my duty in making this statement is to testify to facts, and to avoid making up things that I cannot remember or do not know.

[end of page 1]

5. My parents are Tim and Donna McDow.

6. I am their fourth child.

7. We live in Shelby County, Alabama.

8. I am home-schooled, and this year I will be starting into the ninth grade.

9. In addition to my home-school studies about civics, government and history, I have learned about legislation and politics, by attending training programs sponsored by Teen Pact.

10. Teen Pact is an organization that teaches Christian students about the work of legislators and lawmakers, and about the basic operation of the political process in our country and our states:

a. Teen Pact teaches kids about state legislation and political activities.

b. We listen to speakers, study materials,

and have activities that allow us to look close up at legislative and political activities on the state level.

c. Also, we interviewed lobbyists at the legislature, and we heard from some legislators, and had the opportunity to ask them questions.

d. Participating in the Teen Pact programs has given me an understanding of how state legislatures work, including the process in the legislature and the outside activities of lobbyists and others who influence legislation.

e. I have become interested in government, politics and legislation, and the training at Teen Pact has increased my interest in these subjects, as well as my understanding.

11. As a result of my learning about legislation, government and politics, I have been

[end of page 2]

involved in helping certain candidates for election in their campaigns.

12. I am a Christian.

13. By that, I mean that I have accepted the gift of salvation that comes through Jesus Christ and His death on the cross.

14. As a Christian I would like to spread the faith inside the legislative process, and hope that the result of that will be to affect our country, change its direction, and hopefully, cause it to end legalized abortion.

15. I also believe, as a principal of my faith, that it is important for persons who are followers of Christ to be involved in politics and in governing our Nation.

16. Even more important than what I think, I know that the Bible teaches us to be good stewards of all the things that have been entrusted to us by God; from that teaching in the Bible I believe that we have the responsibility to be involved in the political process and the campaign process in order to make sure that we are being faithful

stewards of God's gifts to us.

17. I actively research and study the candidates for election to various offices of interest to me, asking questions of others and studying information I obtain from their campaigns and on the Internet.

18. As I understand the new campaign reform law, after November 5, 2002, until I reach my eighteenth birthday, I will not be allowed to give my money to candidates for elective federal office, including candidates for the Presidency, for the Senate and for the House.

19. In addition, as I understand it, after November 5, 2002, until I reach my eighteenth birthday, I will not be allowed to give money to any committees of political parties.

20. Being barred from supporting candidates who share my beliefs, opinions, and

[end of page 3]

views, deprives me of the ability that I currently have to give money to such candidates, and takes away a means I have of expressing two different things: my support for the candidate, and my association with the candidate toward common goals.

21. Being denied the ability to give money to federal candidates and the committees of political parties interferes with my free choice to spend my own money as I choose, and with my decision to associate myself with a candidate or a party because of his or her or its beliefs, opinions, and views.

22. As things stand now, I am free to donate money to a candidate of my choosing, and in doing so, I am able to express my support for that candidate, and my affiliation with his or her beliefs, opinions and views.

23. Although I am young, I do have my own money, that is under my direction and control.

24. I earn money several different ways:

a. I earn money for cutting the lawn.

b. I make small Christmas crafts and sell them.

25. When I earn money, I put it into my savings account, and I draw it out when I need it.

26. I plan and intend to give money to candidates for federal office and committees of political parties, as I find those candidates and committees that I can support consistent with my faith in Christ.

27. My parents have never forced me to spend my money in one way or another, except responsibly. If I wanted to do so, I could spend it in many ways; but when the new law

[end of page 4]

goes into effect, one way I will not be free to spend my own money is to support federal candidates with whom I agree.

[subscription and signature omitted]

Declaration of Angus McQueen

* * *

[9 (11 PCS/ NRA 116)]

25. A recent example of an NRA communications effort helps to illustrate the fundamental importance to the NRA of being able to utilize paid broadcast media that references elected officials and other public figures who may hold office in the future:

(a) In early 2000, a 6-year old boy in Flint, Michigan, managed to obtain his father's stolen gun and take it to school. There, he fired the gun and killed a 6-year old classmate. In response to this tragic event, as had happened in the wake of especially horrific examples of gun violence in the years immediately preceding this incident, there was a great deal of media attention brought to bear upon the 'causes' of incidences such as this one and the media's ongoing suggestion that to prevent such instances requires more government restrictions on gun ownership and use by law-abiding citizens – policies which NRA believes to be anathema to the Second Amendment, as well as the NRA's position on these issues.

(b) At the height of this media attention, then-president Clinton appeared on NBC's Today Show, where he was interviewed by the very popular Today Show hostess, Katie Couric. Ms. Couric spoke with the President during a segment that lasted for 14 minutes, 40 seconds. Her questioning of the President was empathetic and friendly. Specifically, prompted by Ms. Couric's leading questions, the President expressed his sadness at the tragic event, and then explained how there had been a significant drop in gun deaths during his tenure. After taking

credit for this drop in gun deaths, the President, at Ms. Couric's invitation, described the additional anti-gun measures he would seek to have enacted by Congress and the federal government, including specifically mandatory child-safety trigger locks. Mr. Clinton then blamed the NRA – by name -- for its opposition to these and other measures, casting NRA in an extremely negative light by [10 (11 PCS/ NRA 36)] characterizing it as having a "stranglehold on Congress." Toward the end of the segment, the President made the comment that "The NRA is against anything that requires anybody to do anything as a member of society that helps to make us safer."

(c) Absent a response from the NRA, such a media appearance by the President of the United States could have devastating consequences. Whatever the popularity ratings or party affiliation of the particular individual inhabiting the office at any particular time, the office of President of the United States always wields a certain moral authority. To have the President directly criticize your organization as part of the problem that has lead to something as tragic as the death of a 6-year old boy obviously creates a huge challenge to the organization – and could well have catastrophic consequences in terms of the political and legislative climate for opposing a presidential initiative in Congress. Moreover, for the President to be cast in a very favorable light by an extremely popular and well-known television interviewer whose tenor with the President suggests an obvious empathy and agreement with his position on the issue of gun regulation substantially compounds this problem for the NRA, its members and the Second Amendment rights of law-abiding American citizens. In short, the NRA's public image, its legitimacy and its moral credibility -- and ultimately its ability to further its core mission of promoting and

protecting Second Amendment rights, was placed at substantial risk by the Clinton Today Show appearance. Moreover, I believe that this was exactly what Clinton and the national media intended to accomplish in order to achieve their political, cultural and legislative goals.

(d) Ackerman McQueen was substantially involved in developing NRA's strategy for responding to the Couric/Clinton Today Show segment. To put the magni[11 (11 PCS/ NRA 37)]tude of the problem into perspective, the President's appearance on the Today Show lasted a total of 14 minutes, 40 seconds. As explained below, the only practical means of responding to President Clinton's attack was to launch a direct counter-offensive that specifically challenged the President *by name*, and that would thereby attract the attention of the national media.

(e) First, of course, came an effort on the part of the NRA to directly rebut the President's comments through an appearance on the Today Show itself. Thus, on March 3, 2000, Wayne LaPierre appeared on the show and was questioned by Ms. Couric for five minutes, fifty-five seconds. During this appearance, Ms. Couric asked a number of pointed questions that obviously reflected a hostile and very skeptical attitude towards the NRA and its objectives. Once again, a national television audience saw the NRA through the lens of its opponents, rather than the image it would seek to present of itself. Thus, the brevity of his appearance and the tone adopted by Ms. Couric toward Mr. LaPierre and the NRA combined to dilute the significance of his appearance to a perfunctory airing of 'the other side' of the government's argument, far less than an adequate rejoinder to President Clinton's attacks on the NRA.

(f) Accordingly, with Ackerman McQueen's help and advice, the NRA developed a

strategy for maximizing the effectiveness of its public response to President Clinton's nationally televised attack on the NRA and on gun rights. Lacking the resources necessary for a sustained nationally televised broadcast media buy, the NRA decided to focus a targeted broadcast media effort that responded directly to the misrepresentations set forth in President Clinton's appearance, and that would be run almost exclusively in the Washington D.C. area. The reason for focusing the effort geographically [12 (11 PCS/ NRA 38)] on Washington D.C. was to garner the maximum possible amount of attention from the national political media and from national political figures, essentially all of whom are based in Washington.

(g) Thus, the NRA asked Charlton Heston, a most effective spokesman for the NRA and a very credible person among the American people, to appear in a series of paid messages in which he directly challenged the President for having made statements that Clinton *knew* to be false. Specifically, on one of these broadcasts, Mr. Heston quoted the precise words President Clinton uttered on the Today Show – "The NRA is against anything that requires anybody to do anything as a member of society that helps to make us safer" – and then proceeded to prove the manifest falseness of this statement by recounting all of the safety initiatives undertaken or supported by the NRA. Finally, Mr. Heston ended the broadcast with a specific confrontation of the President, saying, "Mr. President, when you say something that's wrong, that's a mistake; but when you know it's wrong, that's *a lie*."

(h) In total, the NRA ran 13 similar paid broadcast messages in which Mr. Heston directly confronted President Clinton with similarly pointed challenges. These messages were run repeatedly in the Washington area in an effort to elicit the maximum

media and political interest possible by those broadcast outlets who accept advertising by the NRA (as noted below, some stations refuse *all* advertising sponsored and paid for by NRA, regardless of the content), thereby maximizing the effectiveness of the resources NRA devoted to these broadcasts.

(i) The strategy paid off. After the broadcasts had an opportunity to attract media attention, the press took up the story on its own and pursued it. Thus, a strategy of [13 (11 PCS/ NRA 39)] paid broadcast media led to "free media" that sought to provide at least a slightly more balanced approach to the NRA and its positions on child safety locks, enforcement of gun laws, and gun rights in general. First, ABC news reporter and talk show host Sam Donaldson was given a one-on-one interview with President Clinton, in which he directly confronted the President with the Heston messages and with the NRA response to his misleading statements. Next, Wayne LaPierre was invited onto the ABC news show "This Week," where he was interviewed by Cokie Roberts and Sam Donaldson. As a result of comments he made on This Week, Mr. LaPierre was subsequently interviewed on "Meet The Press" by Tim Russert.

(j) Thus, by carefully constructing a strategy for confronting the President's accusations head-on through a paid media blitz directed solely at the political and media classes located in Washington D.C., the NRA succeeded in achieving a national forum where it was given an opportunity to tell its side of the story in a full response to the President's Today Show accusations. Had the NRA not directly confronted President Clinton by referring to him *specifically by name* in the Heston television broadcasts, but instead merely run broadcasts setting forth its record on the issue of safety locks, it is my firm professional

opinion that it would never have achieved anything approaching success and certainly nothing like the media attention that was achieved through this strategic use of paid television advertising.

(k) The media campaign used by the NRA to respond to the Clinton Today Show segment cost a total of $718,094.20. (*see* Bates NRA-ACK 18001-18024). Had the NRA not been able to utilize this strategy, but had it instead been confined to simply airing national advertisements that spoke to the issue of child safety locks in general, with[14 (11 PCS/ NRA 40)]out mentioning any federal official by name, it would have been considerably more expensive, and would certainly not have achieved anywhere near the same result in terms of public profile for and attention to its message.

26. It is my understanding that under the new campaign finance legislation – the Bipartisan Campaign Reform Act ("BCRA") – the NRA could be prohibited from undertaking the type of media campaign illustrated by the Heston broadcasts. Specifically, if President Clinton had been up for reelection in 2000 (or, conversely, had the media campaign occurred in 1996), then the Heston broadcasts would in many if not all instances have occurred within 30 days of a primary election in which President Clinton was a candidate. Since these broadcasts specifically referred to him by name, they would be criminalized under BCRA. Likewise, if the Today Show incident had occurred close to the November general election, the NRA would have been barred from responding to it through such a media campaign.

27. Based on my understanding of BCRA's prohibitions of these types of media campaigns, I believe it will have a seriously harmful impact on the ability of the NRA, as well as all other similar groups, to respond effectively to public attacks that are leveled against them and their beliefs by politicians and political candidates, especially if they are based on misleading or simply inaccurate factual assertions.

BCRA's prohibitions will therefore harm both issue advocacy groups and the public's ability to learn the truth about the issues and the citizens' groups which advocate those issues and beliefs.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, et al., Plaintiffs,	)	Civ. No. 02-582 (CKK, KLH, RJL)
v.	)	All consolidated cases.
FEDERAL ELECTION COMMISSION, et al., Defendants.	)	**COUNSEL ONLY**
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, et al., Plaintiffs,	)	
v.	)	
FEDERAL ELECTION COMMISSION, et al., Defendants.	)	

DECLARATION OF DENISE MITCHELL

Introduction

1. I am the Special Assistant for Public Affairs to AFL-CIO President John J. Sweeney. I was appointed to this position on November 1, 1995, shortly after Mr. Sweeney was elected President of the AFL-CIO. Prior to assuming this position, I had worked with Mr. Sweeney in a similar role for a number of years when he was President of the

Service Employees International Union and I had assisted in his campaign for election to the position of AFL-CIO President. I have worked in marketing and media relations for unions and other non-profit [2] organizations on working family issues for more than 20 years.

2. As the Special Assistant to the President for Public Affairs, I have the primary responsibility for overseeing all public relations activities of the AFL-CIO including all AFL-CIO use of broadcast and print media. I am responsible for making the operational decisions as to both the substance and the method of communication of the AFL-CIO's message to union members and to the general public. I make the strategic and logistical decisions regarding our media buys, and, within policy guidelines, I also make the editorial decisions regarding the contents of our communications.

3. In seeking to become AFL-CIO President, Mr. Sweeney had campaigned on a platform of providing "a New Voice for American Workers." The underlying thrust of this promise was, and remains, to make public policy accountable to the needs and interests of working families, and to increase workers' participation in legislation and politics by focusing on the issues central to their lives. To that end, the AFL-CIO under Mr. Sweeney's leadership has committed to providing our members timely and accessible information about legislative developments that affect their lives. This has not been limited to developments related to labor law or unions in a narrow sense, but has included a broad range of policies that affect the interests of working men and women, such as Medicare, education, health care and the federal minimum wage. Another goal of the AFL-CIO's public affairs program, particularly as it relates to elections for public

office, has been to direct public debate away from so-called "wedge" issues, such as abortion and gun control, to pocket-book issues of universal importance to working families. In this Declaration I will describe in detail how the AFL-CIO carried out these complementary goals through its broadcast advertising program starting in late 1995 and continuing through 2001. I will also provide information about the amount spent by the AFL- [3] CIO in its advertising program, and I will describe in some detail how decisions have been made about the content or placement of the AFL-CIO ads.

Compilation of AFL-CIO Advertising

4. The Public Affairs Department of the AFL-CIO does not have a single record of all of its broadcast advertisements since 1995. In response to the discovery requests in this litigation, my staff gathered all of the tapes of our ads available in my office and the list attached as Exhibit 1 to this Declaration was compiled. A few of the advertisements on this list may not have run, and a small number of ads that were run may not be reflected because the tapes are not still in our files. With these caveats, I believe that Exhibit 1 is a substantially accurate list of the ads run by the AFL-CIO between 1995 and 2001. The "broadcast dates" listed on Exhibit 1 were derived from a variety of records, including buy books, memoranda, press releases and other documents in my files. I believe that all such documents have been produced in discovery and designated as trial exhibits.

5. In a number of places in this Declaration, I will identify instances in which the AFL-CIO's radio, television and cable advertisements were run within 30 days of a primary election in which the public officials named in

the advertisement were running. This information was compiled using the dates for primary elections as reported in publications of the Federal Election Commission. I understand that these dates were applicable only to the Democratic and Republican parties and, possibly, to minor parties who held their primaries on the same date. We were unable to obtain information regarding the dates on which party conventions or caucuses were held for the selection of nominees of minor parties, so this Declaration does not attempt to report whether advertisements were run within 30 days of those events.

6. Although the records in the Public Affairs Department include sufficient [4] information to determine when most advertisements ran and, in some cases, the stations on which they ran, we do not have records from which it can be determined whether any specific advertisement could be received by 50,000 or more persons within the state or congressional district in which the primary election was held. To the best of my knowledge, such information is not publicly available at the present time. However, because our goal was to reach as many persons as possible within each state or congressional district, I believe that many, if not all, of the advertisements described in this Declaration were likely to be able to be received by 50,000 or more persons.

7. In the following section of this Declaration, I refer to and attach the written scripts for many of the AFL-CIO advertisements since these are easier to access than the tapes of the actual advertisements. I have attached a representative example of the script referred to, rather than the identical scripts for advertisements run in other locations at approximately the same time.

8. Copies of the tapes and compact discs of the advertisements broadcast by the AFL-CIO and retained in our files are also attached to this Declaration as Exhibits 2-22 (AFL-CIO 16696-16756, 17181-17182, 18935-18943). These are chronological compilations created from many separate tapes in our files. These compilations do not precisely reflect Exhibit 1 because Exhibit 1 is drawn from more sources. And, it is possible that a few of the ads on these tapes were never broadcast.

Decision-making as to the Content and Placement of the AFL-CIO's Broadcast Advertising

9. As a general matter, I keep the officers of the AFL-CIO and other senior staff informed about the overall direction of our broadcast program, but the officers do not generally [5] become involved in the day-to-day decision-making, such as the subjects on which advertisements will be run and in what media markets. Within the senior staff, the persons who have been most involved in helping me with respect to the content and placement of broadcast advertisements have been the Legislative Director (Peggy Taylor until January 2001, Bill Samuel since then) and the Assistant to the President for Governmental Affairs (Gerald Shea). As discussed in greater detail below, the AFL-CIO's Political Director (Steven Rosenthal) had little involvement in these decisions during 2000, and virtually none in previous years.

10. In both election and non-election years, my goal in selecting the issues to be addressed in the AFL-CIO's broadcast advertising has been to focus attention on a series of national policy issues of importance to working families. I

have been guided in selecting these issues by input from the Executive Council of the AFL-CIO, which regularly discusses and focuses on a legislative and policy agenda for the organization, the AFL-CIO's ongoing lobbying program, polling and other opinion research, conducted primarily by the Washington, D.C, firm of Peter Hart Associates, and the views of affiliated unions. Most of the issues addressed in our advertisements, such as budget priorities, tax fairness, Medicare, and health care, recur in virtually every session of Congress; others, such as fast-track trade legislation or the trade status of China, may be current for a period of years and then become inactive for awhile.

11. In my experience, from our first flights of television and radio advertisements in late 1995 until the present, virtually all of the AFL-CIO's advertisements in non-election years as well as election years, have identified Senators and Representatives by name. This practice started at least as early as April 1995, before I arrived at the AFL-CIO, and is the result of our strong belief that Members of Congress and Senators must be held accountable for how they vote on issues of importance to union members and working families; based on my experience, [6] advertisements on policy and legislative issues have far less impact when they do not mention a policymaker by name. The express or implied urging of viewers or listeners to contact the policymaker regarding the issue is also especially effective by showing them how they can personally impact the issue debate in question. The only exception to this policy has been for advertisements run on national cable networks, such as CNN, where we cannot name specific candidates because a single advertisement is aired throughout the country, and an occasional generic ad in the Washington, D.C. broadcast market. While these ads add resonance to an

issue debate and emphasize the AFL-CIO's role as a working families advocate, they have little legislative impact and we rarely use them. With certain exceptions, we have tried to run the same or very similar advertisements in a group of media markets at the same time, with only the name of the policymaker being changed in each media market. This is largely the result of financial considerations; it is much less expensive to produce a single ad and run it in a number of markets at the same time than to produce different advertisements for each market. In addition, by running a flight of identical advertisements we are able to ensure a unified issue advocacy message and generate attention in the media for what we are doing, thereby influencing citizens and policymakers in markets where we cannot afford to run an advertisement. To the best of my recollection, during the period from 1995 to the present, we have never run different advertisements at the same time for Representatives or Senators who were not running for re-election than for those who were candidates in an upcoming primary or general election. Thus, as discussed below, on a number of occasions we have run broadcast advertisements naming Representatives or Senators who coincidentally were candidates in a primary or a general election to be held within 30 or 60 days, respectively, while running the identical ad naming a larger number of Representatives or Senators who were not up for re-election in that year.

12. [7] Because of our limited financial resources to support the public affairs program, we have tended, with certain exceptions, to run more advertisements naming Representatives than Senators. This is primarily because it is generally far more expensive to purchase sufficient time on television and radio to have an impact on Senators, who serve a statewide constituency, than Representatives whose

congressional districts are usually smaller. Moreover, we believe that ads targeting Representatives may have a spill-over impact on Senators from the same state. We also have been forced by our limited resources to run our flights of advertisements in a small number of media markets relative to the total number of Representatives or Senators. In selecting the specific targets for our broadcast advertisements, we have relied on a number of factors relating to the particular issue being addressed. How a Representative or Senator has voted with respect to previous identical or similar legislation and whether he or she is currently undecided have been, over the years, among the most important factors. Whether a Representative or Senator is on a relevant Committee or has some other prominent role with respect to a particular piece of legislation is sometimes a critical factor. Other factors may also become important in particular cases, such as whether we anticipate that a Representative or Senator will be especially vocal in responding to our advertisements, thereby helping us gain so-called "free media" for our issue and letting other Representatives or Senators whom we have not targeted know of our position and how important it is to workers.

13. It is certainly true that the AFL-CIO's advertisements have targeted more Republican legislators than Democrats, although many Democrats have been targeted on specific issues. There are a number of reasons for this, the most important being that throughout all of this period both Houses of Congress were controlled by the Republican Party and, for most of this period, the Republican leadership in Congress, led by Speaker Newt Gingrich, has actively [8] pursued an overwhelming partisan legislative agenda seeking to remove or limit many of the pro-worker protections and benefits achieved in prior years.

14. Finally, two other related factors have played an important role in the AFL-CIO's selection of markets for our broadcast advertising. In order to focus our limited resources on Representatives or Senators who were regarded as being susceptible to the AFL-CIO's point of view on particular issues, we have often aired our advertisements in states or congressional districts with large numbers of union members, because it is in these areas that our ability to activate our membership and change a Member of Congress's position is likely to be the greatest. We have similarly tended to focus on locations where elections for the House and Senate are likely to be close because our experience has shown, and the advice we have received has indicated, that the public and policymakers are far more likely to pay attention to our message where elections are competitive and the advertising could influence public perceptions of their official conduct and policy commitments than where one candidate is regarded as a shoo-in for election.

15. In early 1996, my understanding of the legal environment was that there was significant doubt as to whether or not I could discuss any of my decisions regarding the content and placement of the AFL-CIO's broadcast advertisements with any candidate, candidate committee, or party official; AFL-CIO activities that were "coordinated" with candidates or parties could be treated as unlawful contributions to them. I also understood that there was a considerable degree of uncertainty concerning what contacts with a candidate or party official might be treated as improper "coordination." At roughly the same time, I was asked by our lawyers to assist in preparing the AFL-CIO's response to complaints filed with the Federal Election Commission by various Republican Party committees

alleging that the AFL-CIO had [9] illegally coordinated our broadcast communications with various Democratic candidates, the White House and the Democratic Party.

16. Throughout my tenure I have studiously avoided discussing the content or placement of the AFL-CIO's radio and television advertisements with any candidate for federal office or any person whom I know or have reason to believe may be working for such a candidate. I have also avoided discussing the advertisements with any political party official. I have made this policy known to my staff in the Public Affairs Department and often reminded them of it. I can only recall a few instances over the years in which I was approached by a candidate or someone acting on behalf of a candidate and urged to run broadcast ad in the candidate's state or congressional district. In each instance I informed the candidate or other individual that I could not discuss the AFL-CIO's broadcast advertising with him or her and ended the conversation, and I did not respond to the request by running advertisements as requested. Indeed, it is likely that if such a request was made I would have avoided doing so in order to avoid any possible legal claim against the AFL-CIO.

17. In contrast to the Public Affairs Department, I am aware that the AFL-CIO's Political Department regularly communicates with candidates for federal office, their campaigns, and party officials. Because we understood the law to be very uncertain on the matter, in order to avoid any charge that the AFL-CIO was using the staff of the Political Department to coordinate our advertising program with candidates and party officials, beginning in 1996 an internal "Chinese wall" was constructed to keep the Political Department isolated from my decisions regarding the placement and content of our broadcast advertising. Thus,

although I met with our Political Director, Steven Rosenthal, from time to time on a variety of organizational matters, I avoided discussing the content or placement of our advertisements with him.

18. [10] Mr. Rosenthal similarly did not provide me with polling and similar information that could reveal the specific plans of the Political Department in connection with the election. I was reminded at my deposition that in July 1986 Mr. Rosenthal sent me a list of states grouped according to how close the presidential election looked. I requested that list so I would know where other advertising was likeliest to be heavy in the Fall, so we could plan our own ad buys. Otherwise, to the extent that I needed information about political races, I usually relied on general circulation publications, including the Rothenberg Report.

19. The "wall" of separation between the Public Affairs and Political departments remained in effect throughout the 1996 and 1998 federal elections cycles. In 2000, we came to understand that the definition of impermissible "coordination" had been clarified to some extent in a recent judicial decision involving the Christian Coalition and in regulations issued by the Federal Election Commission. As a result, I understood that, while we still could not coordinate specific broadcast advertisements with candidates or party officials, it was no longer necessary to maintain a rigid "wall" between the Public Affairs and Political departments. In reality, however, the relationship between the two departments had become well-established with respect to the content and placement of broadcast advertising and the Political Department continued to have very little involvement in these decisions.

20. When I joined the AFL-CIO in November, 1995, the AFL-CIO was using a single media consulting firm, Greer, Margolis, Mitchell, Burns & Associates' to create and produce its television and radio advertisements and to purchase time for running these advertisements. I continued to use Greer, Margolis for these purposes for the broadcast ads that we ran at the end of 1995 and into the Spring of 1996. Some time in 1996, however, I decided that we should make a change in the way we were handling our communications program, particularly insofar as [11] we were using the same firm that developed and produced the advertisements as the media buyer for the advertisements. After interviewing a number of firms, in June 1996 we switched to three other firms to develop and produce our advertisements, Axelrod and Associates, Shrum, Donilon & Devine, and Sol Shorr & Associates. We also began using Media Strategies and Research, Inc., a Colorado-based media buyer, for all of our broadcast advertising. During my deposition in this litigation on September 18, 2002, I was shown several communications relating to my selection of our new media consultants and media. Although some of those documents include references to electoral goals of AFL-CIO broadcast media, that is not how I described our goals to prospective consultants, and the memo from Media Strategies and Research predates by five months our decision to hire the firm.

21. In helping to respond to the Republican Party FEC charges against the AFL-CIO concerning our 1996 broadcast advertisements, I learned that Greer, Margolis may have done a small amount of work for the Democratic National Committee and the Democratic Senatorial Campaign Committee, although my recollection is that the work for the DNC only involved the production of a tape on a

trip taken by President Clinton to Ireland and the work for the DSCC occurred after we stopped using the firm. However, I never discussed Greer, Margolis' activities on behalf of the DNC or the DSCC with the firm and was not even aware of it until well after the 1996 election. Well after the election, I similarly learned as a result of the FEC investigation that Media Strategies and Research had acted as a media buyer for a small number of candidates at the same time as it was acting as the AFL-CIO's media buyer. I was not aware of MS&R's work on behalf of those candidates at the time, and I am certain that MS&R never discussed the candidates' plans or needs with me or my staff. Finally, I became aware for the first time during the FEC investigation that our public opinion consultants, Peter Hart Research Associates, had [12] worked for a Member of Congress in whose district the AFL-CIO had run broadcast ads, although I was not sure of this fact during the election.

22. The AFL-CIO has also declined as a matter of policy to desist from broadcast issue advocacy where candidates have called on groups not to engage in it while they are campaigning. This is because we make an independent judgment as to whether it is necessary or advisable for the AFL-CIO to run broadcasts, and we scrupulously avoid collaboration with officeholders in their capacities as candidates concerning our broadcast efforts, including whether or not to broadcast at all. Two recent examples occurred in 2000. During the New York U.S. Senate race, Democrat Hillary Rodham Clinton and her opponent Republican Rick Lazio publicly discussed an agreement to call on all groups and organizations to forego advertising about either of them. As attached Exhibit 23 (AFL-CIO 20130) demonstrates, the AFL-CIO publicly rejected abiding by such a request, although we had no plans

(and did not) engage in any such broadcasts. Another such request was made by the campaign of Susan Davis (D) for Congress in California. Again, we declined to comply, and in fact broadcast an ad in July referring to her opponent; incumbent Brian Bilbray (R), concerning prescription drug coverage under Medicare.

23. Since 1996, AFL-CIO issue advertising has prompted numerous efforts by the three national Republican Party committees to dissuade broadcast stations -- usually with threats of litigation -- from continuing to broadcast the ads. In no instance has any of these party committees ever contacted the AFL-CIC about the matter; instead, their practice has been to send letters to the stations demanding that they pull our ads. Numerous stations have complied with these demands, with or without seeking our response or even informing us that they have done so. Others have forwarded the letters to us for a response, and then in light of our response [13] usually continued or resumed airing our ads. Attached as Exhibit 24 are Republican Party committee letters and press releases, AFL-CIO responsive letters, and related correspondence from 1996, 1997 and 1999 reflecting these disputes. (AFL-CIO 17188-91, 17865-67, 17152-56, 17125-30, 19976, 17138-39, 17157-58, 17145-47, 17143-44, 20299-302, 17131-33, 18918-32.) Attached Exhibit 25 indicates, for example, that, at one point during July 1996, 12 stations were refusing to carry AFL-CIO ads for reasons other than an overall station policy against "third party" advertising, six stations had pulled ads they had been running, and one was threatening to do so. (AFL-CIO 17159-80).

24. From my experience, if, contrary to the Bipartisan Campaign Reform Act (BCRA), the AFL-CIO

were able to continue broadcasting advertisements that refer to officeholders who are candidates, or non-incumbent candidates, during the 30- and 60-day periods before primaries and general elections, but the AFL-CIO were required by the BCRA to file detailed public reports with the FEC about the potential content of future advertising once the AFL-CIO contracted for or spent $10,000 in expenditures to do so, four consequences would surely follow:

a. First, this obligation of advance disclosure would chill and deter the AFL-CIO from initiating some broadcast plans because we would lose the leverage and impact that ordinarily follows from conveying our message at a way and time of our choosing.

b. Second, the AFL-CIO would be forced to disclose ongoing and changing broadcast message strategies and ideas that it might never carry out -- for reasons unrelated to that disclosure -- and publicize our internal decision-making processes that we believe should remain, and needs to remain, confidential.

c. Third, officeholders, candidates, party committees and others who oppose [14] AFL-CIO policies would seek to pressure broadcast stations into refusing to carry contemplated advertising in advance of the broadcasts, and establish a pattern of preemptive attacks to silence us.

d. Fourth, our opponents would be likely to arrange to broadcast counter-messages simultaneously or even before ours are broadcast.

25. I also understand that the BCRA would require broadcasters immediately to disclose to the public a

great deal of information about any "request" -- even if rejected -- by the AFL-CIO to purchase broadcast time for any message concerning a "political matter of national importance," including a "legally qualified candidate," "any election to Federal office," or "a national legislative issue of public importance." This publicly disclosed information would include the date and time of the requested broadcast; the candidate, election or issue the broadcast would refer to; the identity of the AFL-CIO representative making the request; and a list of the AFL-CIO's chief executive officers or Executive Council members.

26. I do not know the scope of the "matters" and "issues" that the BCRA would require broadcasters to disclose, but assuming that much or all AFL-CIO broadcast advertising of the kind that has run since 1995 would be covered, from my experience these requirements would be both chilling and burdensome. The AFL-CIO, usually through MS&R, regularly contacts broadcast stations in order to arrange for advertisements to air. If every such request triggered public disclosure of the intended date, time and subject matter of the ad, the AFL-CIO would be deterred and hampered in its public issue advocacy efforts for each of the four reasons I have described above with respect to filing advance disclosure reports with the FEC regarding "electioneering communications." And, the broadcaster disclosure requirements are even broader than the "electioneering communications" disclosure requirements, because they cover [15] ads that do not mention candidates or any individual, and because they include disclosure of the exact date and time of an intended broadcast. These disclosures would-reveal a great deal about ongoing and preliminary AFL-CIO plans and decision-making by providing a road map of when and where we might broadcast

issue advertising -- again, regardless of what we finally decide, including a decision not to broadcast anything.

27. The AFL-CIO has expended substantial resources for broadcast issue advertising. The direct costs, comprised of third-party payments, and excluding staff time and other overhead, for 1997-2001 are as follows:

1997: $3,757,193
1998: $8,392,148
1999: $3,065,187
2000: $17,890,425
2001: $3,490,469

The usual costs of production and air time are such that the $10,000 reporting threshold in the BCRA would be met for virtually any AFL-CIO broadcast.

28. The AFL-CIO also sometimes purchases newspaper advertising for its issue advocacy. We have usually done so in newspapers with high readership among Members of Congress and their staffs, such as Roll Call and the Washington Post. When we are seeking to influence and mobilize public opinion, however, we almost always have used broadcast advertising because it is far more cost-effective; most people get their news and information from broadcast sources; newspaper readership is tilted toward higher-income readers, and we try to reach working and middle-class families; and broadcasts simply have a more potent effect, including the ability to generate additional "free media," reporting about the advertisements [16] themselves. Also, newspapers are a more passive medium, with less immediacy than broadcast, and are less likely to generate action, and it is far harder to convey in print the human,

personal impact of legislative issues -- a key part of our strategy and effectiveness.

29. The AFL-CIO has not undertaken to use direct mail or telephone banks to reach the general public. These means by definition are not mass, publicized communications, so there could not trigger the same amplification through "free media;" and, these costly and labor-intensive means, requiring massive lists and technological investments, could not offer the same efficiencies and impact a: broadcast.

The AFL-CIO's Broadcast Advertising: 1995 to 2001

30. In the Fall of 1995, President Clinton and the Republican Congress, led by Speaker Gingrich, became embroiled in a battle over the FY 1996 federal budget. The AFL-CIO undertook a series of grassroots lobbying activities in an effort to mobilize workers and the public in support of the President's position. As part of this grassroots effort, the AFL-CIO sponsored a flight of television and radio advertisements called "Families" and "Fair" that ran in media markets serving approximately 23 Congressional Districts between December 5 and 11, 1995. The script for "Families" is attached as Exhibit 26 (AFL-CIO 7173). A memorandum to me from our media consultant documenting the broadcast dates for these ads is attached as Exhibit 27 (AFL-CIO 1253-1254). The television version of the advertisement discussed the proposed cuts to Medicare, college loans and other programs in the Republican budget plan and concluded by urging viewers to contact their representatives in opposition to that proposal: "Now it's up to us to get involved and speak out. Let's tell Congressman XXX: this time don't vote for the wealthy special interests.

This time vote for America's working families." The Members of Congress selected as targets of the "Families" and "Fair" advertisements had all voted in favor of [17] the Republican budget plan.

31. When the budget impasse continued into January 1996, the AFL-CIO sponsored another flight of television and radio advertisements entitled "Too Far" and "Why" that ran between January 17 and 23, 1996 in media markets serving approximately 18 Congressional Districts. A copy of the scripts are attached as Exhibits 28 (AFL-CIO 7174) and 29 (AFL-CIO 7172) and additional materials produced by my office related to these advertisements are attached as Exhibit 30 (AFL-CIO 1255-1256). The television version of this advertisement discussed the government shutdown, the Republican budget cuts, and concluded: "Let's tell Congressman XXX to stop the political games and stand up for working families for a change."

32. In addition to the television version of "Too Far," a generic version of the advertisement also ran on CNN between January 17 and 23, 1996 as a so-called national buy, meaning that the time for this advertisement was purchased nationally, rather than through local cable outlets, and it was seen throughout the country. The cable version of "Too Far" did not mention the name of a specific Member of Congress, as did the television version, but it did mention President Clinton and Rep. Gingrich by name and included their likenesses. A copy of the script is attached as Exhibit 31 (AFL-CIO 7178). Within 30 days after "Too Far" ran on CNN, President Clinton's name appeared on the primary ballots in Iowa (February 12, 1996) and New Hampshire (February 20, 1996), both of which elections he won easily without serious opposition.

33. During my deposition in this case I was asked a number of questions concerning a news article dated January 25, 1996. Attached as Exhibit 32 (AFL-CIO 19757-19769) is a transcript of the press conference described in that news article.

34. As set forth in the Declaration of Gerald Shea, during April 1996 the AFL-CIO [18] undertook a major lobbying campaign to increase the federal minimum wage from $4.25 to $5.15. As part of this effort, the AFL-CIO sponsored a flight of paid television advertisements entitled "1991" that ran between April 9 and 15, 1996. A copy of the script is attached as Exhibit 33 (AFL-CIO 6948), and additional materials produced by my office related to these advertisements are attached as Exhibit 34 (AFL-CIO 006971, 19945). The advertisements emphasized the need to increase the minimum wage and urged viewers to call their representatives in Congress and tell them to vote for the increase. "1991" ran in approximately 19 media markets serving congressional districts of Representatives who had voted against bringing up the minimum wage increase at the end of March. A radio version of "1991" was run in approximately nine markets. At least three of the Representatives named in the television and radio advertisements run by the AFL-CIO during April 1996 coincidentally were candidates in a primary election within 30 days after the advertisements ran. These individuals are identified on Exhibit 1.

35. During the first week in May 1996, the AFL-CIO sponsored another flight of radio advertisements targeted at Representatives who had voted not to bring the minimum wage increase up for a vote. Entitled "Raise" and "Votes,"

these advertisements ran in markets serving approximately 29 congressional districts. A copy of the scripts are attached as Exhibits 35-36 (AFL-CIO 6995-6996) and additional materials produced by my office related to these advertisements are attached as Exhibit 37 (AFL-CIO 6992-6994). Between May 20 and 23, 1996, after the House leadership indicated that it would allow the minimum wage increase to be brought up for a vote, the AFL-CIO sponsored another flight of television and radio advertisements entitled "People" and "No" in markets serving 27 congressional districts. Copies of the scripts are attached as Exhibits 38 (AFL-CIO 7050) and 39 (AFL-CIO 7023), and [19] additional materials produced by my office related to these advertisements are attached as Exhibits 40 (AFL-CIO 19946) and 41 (AFL-CIO 7024-29). At least three of the Members of Congress named in these television and radio advertisements run by the AFL-CIO during May 1996 coincidentally were candidates in a primary election within 30 days after the advertisements ran. These individuals are also identified on Exhibit 1.

36. Between July 5 and 8, shortly before the minimum wage bill was due to be voted on in the Senate, the AFL-CIO ran radio ads entitled "Minimum Wage" targeting the Republican Senators in Maine, Vermont and South Dakota. A copy of the script is attached as Exhibit 42 (AFL-CIO 6935) and additional materials produced by my office related to these advertisements are attached as Exhibit 43 (AFL-CIO 6936-6937). In order to keep pressure on Republicans in the House to vote in favor of the final version of the minimum wage bill after it returned from the Senate, between June 27 and July 7, the AFL-CIO ran a television advertisement entitled "$5.15" in media markets serving approximately 14 congressional districts. A copy of the

script is attached as Exhibit 44 (AFL-CIO 7125) and additional materials produced by my office related to these advertisements are attached as Exhibits 45 (AFL-CIO 7116-7117) and 46 (AFL-CIO 7148). The advertisement informed viewers that their Representative had voted against the minimum wage in May "even though 93 other Republicans voted for the bill," and urged them to call the Member named in the advertisements and "Tell him[her] it is time to start rewarding work. Tell him its time to raise the minimum wage." The Members who were targeted in those ads had voted against final passage of the House bill in May; we discontinued our advertisements regarding a number of Members who had previously been targeted but who had voted for the House bill. At least one of the Members of Congress named in the television and radio advertisements run by the AFL-CIO during July 1996 coincidentally was a candidate in a [20] primary election within 30 days after the advertisements ran, although I was not aware of this at the time.

37. Between June 27 and August 4, 1996, the AFL-CIO sponsored flights of substantially similar television and radio advertisements entitled "Couple," "Lady," "Peace," and "Wither." Copies of the scripts are attached as Exhibits 47 (AFL-CIO 17642), 48 (AFL-CIO 7166), 49 (AFL-CIO 7170), and 50 (AFL-CIO 17676) and additional materials produced by my office related to these advertisements are attached as Exhibits 51 (AFL-CIO 17694-17696) and 52 (AFL-CIO 17705-17706). These advertisements were all intended to defeat the continuing efforts of the Republican Congress to reduce Medicare/Medicaid benefits as part of the FY 1997 federal budget legislation. For example, "Couple" reminded listeners and viewers about the cuts in the Medicare program adopted by the Republican Congress in November 1995,

stated that "Congress is preparing to vote again on drastic cuts in Medicare," and urged viewers and listeners to call the Representative who was named in the advertisements and "tell him not to destroy Medicare. Tell him this time we're watching." "Peace," which was run only on radio, urged listeners to call the named Member of Congress and "Tell him to keep his hands off Medicare." "Wither" focused on adverse comments about Medicare by Speaker Gingrich.

38. Between August 28 and September 4, 1996, the AFL-CIO sponsored another flight of advertisements entitled "Another" in response to a series of advertisements run by business interest groups that called into question the AFL-CIO's Medicare ads by claiming that the Republican budget would increase, rather than decrease, Medicare benefits. A copy of the script for this ad is attached as Exhibit 53 (AFL-CIO 19368) and additional materials produced by my office related to these advertisements are attached as Exhibits 54 (AFL-CIO 7126-7127), 55 (AFL-CIO 19987-19988), and 56 (17782-17783). The tag line to "Another" urged viewers [21] to tell the named Member "we know the truth about his vote [in 1995] to cut our Medicare benefits. Another vote is coming. This time we'll be watching."

39. At least 12 of the Members of Congress named in the Medicare television and radio advertisements run by the AFL-CIO during July and August, 1996 coincidentally were candidates in a primary election within 30 days after the advertisements ran. These individuals are identified on Exhibit 1.

40. As part of the AFL-CIO's continuing legislative program, in August 1996, the AFL-CIO sponsored

a television and radio advertisement entitled "Edith," which was intended to gain support for legislation to protect the retirement savings of working families by applying the same protections to 401(k) plans as already applied to traditional defined benefit plans. A copy of the script for this advertisement is attached as Exhibit 57 (AFL-CIO 7082) to this Declaration, and additional materials produced by my office related to these advertisements are attached as Exhibit 58 (AFL-CIO 17912-17928). The advertisement was broadcast in congressional districts whose Representatives had all supported legislation as part of the "Contract with America" that would have made it easier for corporations to raid their pension plans without informing workers. The advertisement featured an employee of a company that had raided its 40(k) plan assets before it went broke, and urged viewers and listeners to call a named Member of Congress and "tell [him] to put the law on our side." At least 11 of the Representatives named in the Medicare television and radio advertisements run by the AFL-CIO during July and August, 1996 coincidentally were candidates in a primary election within 30 days after the advertisements ran. These individuals are identified on Exhibit 1.

41. Between September 5 and 17, 1996, the AFL-CIO sponsored a flight of radio and television advertisements entitled "No Two Way," which focused on the upcoming budget fight [22] over education programs. A copy of the script is attached as Exhibit 59 (AFL-CIO 17933) and additional materials produced by my office related to these advertisements are attached as Exhibits 60 (AFL-CIO 17929-17931) and 61 (AFL-CIO 17934-17936). The advertisement ran in media markets serving approximately 35 congressional districts. The advertisement informed viewers that the named Representative had voted with Newt Gingrich to cut the

college loan program in October, 1995 and that "Congress will vote again on the budget." It ended by asking viewers and listeners to "Tell [Cong. X] "don't write off our children's future.... Tell him his priorities are all wrong." The ad also included an 800 number to be used in contacting the named Representative. At least eight of the named Representatives in Medicare television and radio advertisements run by the AFL-CIO during September 1996 coincidentally were candidates in a primary election within 30 days after the advertisements ran. These individuals are identified on Exhibit 1. Furthermore, although these advertisements were broadcast in direct response to pending legislation, all of the "No Two Way" advertisements were run on television or radio stations on one or more occasions within 60 days of the general election held on November 5, 1996. The Members targeted by these advertisements are identified in Exhibit 1.

42. The second session of the 104th Congress adjourned October 3, 1996. After that date, therefore, the AFL-CIO discontinued its television and radio broadcast program aimed at immediately pending legislative issues. However, beginning in late September and continuing until the November election, the AFL-CIO ran what we called "electronic voter guides" comparing the positions of congressional candidates on a number of important issues. These ads were entitled "Kids," "Retire," "Medicare," "Taxes," and "Homes." Copies of the scripts are attached as Exhibits 62 (AFL-CIO 7193), 63 (AFL-CIO 7204), 64 (AFL-CIO 7190), 65 (AFL-CIO 7200), 66 (AFL-CIO 7226), 67 (AFL-CIO 7194), and 68 (AFL-CIO 7208) and additional [23] materials produced by my office related to these advertisements are attached as Exhibits 69 (AFL-CIO 7197-7198), 70 (AFL-CIO 7205-7206), 71 (7191), 72 (7201-7202),

73 (7188), 74 (7195-7196) and 75 (7209-7210). The purposes of these voter guides were to continue the AFL-CIO's efforts to inject working family issues into the congressional elections by educating the public about the candidates' positions on these issues, and to maintain pressure on candidates to take pro-worker positions with respect to these issues during their campaigns, in order to achieve more favorable treatment by them when the issues arose again in the next Congress. The issues we selected to highlight in the voter guides had been addressed in issue advertisements sponsored by the AFL-CIO during the previous year - Medicare, education, tax fairness and pension protection - and were issues that annually are addressed in Congress.

43. Each of the AFL-CIO's electronic voter guides included an 800 number through which viewers and listeners could request additional written information about the positions taken by the candidates running for Congress in their districts. A copy of the written information provided is attached as Exhibit 76 (4923-4925). The electronic voter guides, as well as the written materials sent to respondents, were prepared by the Public Affairs Department from public sources, including the Congressional Record, web sites, news stories, etc. We did not contact any candidate to obtain the information about their records, or otherwise discuss the content of the guides with any candidates, party officials or their agents. And, the issues selected and research for the electronic voter guides were determined without input from the AFL-CIO's Political Department.

44. All of the electronic voter guides run by the AFL-CIO in 1996 were broadcast on television or radio during the 60 days prior to the general election on November

6. The candidates whose records were compared in these guides are identified in Exhibit 1.

45. [24] Throughout 1997, the first session of the 105th Congress, the AFL-CIO continued to sponsor television and radio advertisements on legislative issues of importance to working families. The advertisement entitled "Values" ran on television between April 1 and 7, 1997. A copy of the script is attached as Exhibit 77 (AFL-CIO 18881) and additional materials produced by my office related to this advertisement are attached as Exhibits 78 (AFL-CIO 18904-18905) and 79 (AFL-CIO 20008). A similar advertisement, entitled "Choice," was run on radio during the same period. The advertisements were intended to raise questions about America's priorities by asking why Congress neglects crumbling schools in need of repair, yet at the same time gives tax subsidies that actually reward companies for sending jobs overseas. The advertisements urged listeners and viewers to contact both Republican and Democratic Representatives through their local office telephone number and "tell him [her] to protect our kids, not special interests. Let's make the right choice for working families."

46. Between May 10 and 14, 1997, the AFL-CIO sponsored a flight of radio advertisements entitled "Gut" targeting both Democratic and Republican Senators from nine states who, based on their previous voting records, our Legislative Department regarded as possible supporters of a pending proposal that would have allowed employers to require their employees to work over 40 hours a week without paying them overtime. Each advertisement urged listeners to contact the named Senator through an 800 line and "tell him[her] to do the right thing for [state]'s working families by voting no."

47. Between June 18 and 24, 1997, the AFL-CIO ran a radio ad entitled "Everybody" and a television ad entitled "Fairness" opposing a Republican proposal to exclude welfare recipients from the protections of the Fair Labor Standards Act. A copy of the television script is attached as Exhibit 80 (AFL-CIO 6686) and additional materials produced by my office related [25] to these advertisements are attached as Exhibits 81 (AFL-CIO 6687-6689) and 82 (AFL-CIO 6690). The advertisements mentioned certain Representatives by name and urged viewers to "Call Congressman XXX at 1-800-765-4400. Tell him [her] to fight for fairness. One minimum wage for everybody."

48. In June 1997, prior to a vote in the House of Representatives on competing Republican and Democratic tax proposals, the AFL-CIO sponsored a number of television and radio advertisements urging support for President Clinton's tax proposal and opposition to the Republican plan. These advertisements, entitled "Paycheck" and "Breaks," targeted Republicans and Democrats. Following passage of H.R. 2014 in the House, in early July the AFL-CIO ran another flight of radio and television ads entitled "Wrong" and "Bad Vote" in the congressional districts of 23 Members who had voted in favor of the Republican-supported bill. Copies of the scripts are attached as Exhibits 83 (AFL-CIO 20179), 84 (AFL-CIO 20178), 85 (AFL-CIO, 18910), and 86 (18911), and additional materials produced by my office related to these advertisements are attached as Exhibits 87 (AFL-CIO 18906-18909), 88 (AFL-CIO 18916-18917) and 89 (AFL-CIO 20021-20022). These advertisements criticized the named Members for their votes and urged them to support the White House proposal when the issue returned

for consideration.

49. Throughout September and into October, 1997, when President Clinton asked Congress for so-called "fast-track" trade authority, the AFL-CIO aired television and radio advertisements entitled "Rush" and "Get It Right" in opposition to the President's proposal. Copies of the scripts are attached as Exhibits 90 (AFL-CIO 6518) and 91 (AFL-CIO 6511) and additional materials produced by my office related to these advertisements are attached as Exhibits 92 (AFL-CIO 6635) and 93 (AFL-CIO 20027). The ads, which targeted approximately [26] 23 Members of Congress who had previously voted in favor of a similar proposal, mentioned the Representatives by name and urged listeners or viewers to "Tell Congressman XXX] to no vote on Fast Track so he can fight for trade deals that work for us," or "Call Congressman X at 1-800 .... and tell him to stop fast track."

50. Between July 15 and 23, 1998, the AFL-CIO sponsored several flights of television and radio advertisements designed to generate support for HMO reform legislation (H.R. 3605) that had been introduced earlier in the year and was about to come to a vote in the House. Two ads, "Pass" (radio) and "Support" (television), targeted 12 Republicans and nine Democrats. Copies of these scripts are attached as Exhibits 94 (AFL-CIO 6876) and 95 AFL-CIO (6730), and additional materials produced by my office related to these advertisements are attached as Exhibits 96 (AFL-CIO 6878-6880) and 97 (AFL-CIO 6736-6738). The television ad informed the public that "Fortunately, our Representative, [name] supports the Patient Bill of Rights," and urged listeners to "Call and thank him at 1-800 ..... and ask him to make sure Congress passes this law for working

families." Other ads run during this period, entitled "Call," "Failed," "Liable," "Soon" and "Basic," targeted Representatives and Senators, including one Democrat, who had not yet endorsed H.R. 3605 but who our Legislative Department believed could be persuaded to support the bill. Copies of these scripts are attached as Exhibits 98 (AFL-CIO 6586), 99 (AFL-CIO 20173), 100 (AFL-CIO 6919), 101 (AFL-CIO 20174), and 102 (AFL-CIO 20176), and additional materials produced by my office related to these advertisements are attached as Exhibits 103 (AFL-CIO 17023-17031) and 104 (AFL-CIO 20045-20046). As reported in Exhibit 1, at least one Representative (Tanner, D-TN) and one Senator (Bond, R-MO) named in the advertisements coincidently were candidates in primary elections within 30 days after the advertisements ran.

51. [27] In September 1998, the Republican leadership in the Senate scheduled a vote on S. 2330, an extremely inadequate Patient's Bill of Rights bill that was opposed by the AFL-CIO. In response, the AFL-CIO sponsored a flight of advertisements entitled "Deny" that was intended to generate opposition to the bill. A copy of the script is attached as Exhibit 105 (AFL-CIO 6911), and additional materials produced by my office related to these advertisements are attached as Exhibits 106 (AFL-CIO 20050-20051) and 107 (AFL-CIO 20049). The advertisement, which ran on both television and radio between September 10 and 23, 1998, targeted approximately 17 Senators who the Coalition believed could be persuaded to support the stronger bill supported by the AFL-CIO and its coalition partners. Thirteen of these Senators were not candidates in the general election to be held on November 3, 1998. However, as shown on Exhibit 1, the remaining four Senators targeted by name in the "Deny" advertisements

were candidates in the November 3, 1998 election.

52. During September 1998, Congress also considered a Republican proposal to use the Social Security Trust Fund to pay for tax cuts. The proposal was included in the Taxpayer Relief Act ("TRA"), which was scheduled for a vote in the House on September 26, 1998. In response, the AFL-CIO ran flights of radio and television advertisements entitled "Spearmint" and "Spear," which focused on the Republican tax proposal. Copies of the scripts are attached as Exhibits 108 (AFL-CIO 19369) and 109 (AFL-CIO 20172), and additional materials produced by my office related to these advertisements are attached as Exhibits 110 (AFL-CIO 2055-2056), 111 (AFL-CIO 19484-19506) and 112 (AFL-CIO 19481-19483). The ads ran between September 22 and 25 in approximately 15 congressional districts. After the TRA passed the House and was being considered in the Senate, we ran another flight of ads on this subject entitled "Save" (television) and "Block" (radio), which were intended to influence House [28] Members in the event that the bill returned for another vote in the Senate. Copies of these scripts are attached as Exhibits 113 (AFL-CIO 19370) and 114 (AFL-CIO 20297), and additional materials produced by my office related to these advertisements are attached as Exhibit 115 (AFL-CIO 20060-20061). These ads ran between October 2 and 9, 1998 in approximately 20 congressional districts. As shown in Exhibit 1, all of the Members targeted in both flights of TRA ads were candidates in the general election held on November 3, 1998.

53. When another vote on pending "fast-track" trade legislation was hastily scheduled in the House of Representatives for September 25, 1998, the AFL-CIO ran a

flight of radio advertisements entitled "Barker" between September 21 and 25 in eight congressional districts urging listeners to call their Representative and "tell him to vote no on Fast Track. Tell him we're still paying attention. And Fast Track is still a bad idea." A copy of the script for this advertisement is attached as Exhibit 116 (AFL-CIO 6476). The names of the individual Members named in these advertisements, all of which ran within 60 days of the general election on November 3, 1998, are shown on Exhibit 1.

54. The primary focus of the AFL-CIO's broadcast advertising in 1999 was the Patient's Bill of Rights (PBR), which had been stalled in the Senate at the end of 1998. As the Senate again took up the PBR proposals in July, the AFL-CIO ran a flight of advertisements entitled "Side"(television) and "Charge" (radio) that compared the Democratic proposal with the weaker Republican proposal that ultimately passed in the Senate on July 19, 1999. Copies of the scripts for these ads are attached as Exhibits 117 (AFL-CIO 6389) and 118 (AFL-CIO 16724), and additional materials produced by my office related to these advertisements are attached as Exhibit 119 (AFL-CIO 20073). The ads targeted 10 Republican Senators whose votes were regarded as crucial in the upcoming vote. Later in the year, when PBR was brought up in the [29] House, the AFL-CIO ran another flight of ads in support of a bipartisan bill introduced by Reps. Norwood (R-GA) and Dingell (D-MI). Those ads, entitled "Watch" (radio) and "Decide" (television), ran for four days immediately before the House vote on October 7, 1999, and targeted approximately 15 Members of Congress. A copy of the radio script is attached as Exhibit 120 (AFL-CIO 6381), and additional materials produced by my office related to these advertisements are attached as Exhibits 121 (AFL-CIO 20079), 122 (AFL-CIO

6387), and 123 (19831).

55. In July 1999, the AFL-CIO ran television and radio advertisements entitled "Voice" and "Secure." Copies of the scripts are attached as Exhibits 124 (AFL-CIO 6379) and 125 (AFL-CIO 20182), and additional materials produced by my office related to these advertisements are attached as Exhibit 126 (AFL-CIO 20078). These ads targeted approximately 15 Representatives who had voted for a $792 billion tax cut on July 22, 1999 and focused on the need to shore up programs such as Medicare.

56. In November and December, 1999, the AFL-CIO ran a number of ads in the Seattle area at the time of the meetings of the World Trade Organization to focus attention on the goals of the union demonstrators.

57. In the months of February through June, 2000, the AFL-CIO ran several flights of ads entitled "Label," "Trust," "Endure," and "Stand" in opposition to President Clinton's proposal to provide permanent normal trade relations to China. Copies of these scripts are attached as Exhibits 127 (AFL-CIO 16671), 128 (AFL-CIO 6359), 129 (AFL-CIO 6355), and 130 (20175), and additional materials produced by my office related to these advertisements are attached as Exhibits 131 (AFL-CIO 6356-6358), 132 (AFL-CIO 16658-16670), 133 (AFL-CIO 6362), 134 (AFL-CIO 6237-6244), 135 (6371-6376) and 136 (20103-20104). As shown on [30] Exhibit 1, China advertisements naming five Representatives coincidentally were run within 30 days of primary elections held in the congressional districts served by those Members.

58. In late June to early July, 2000, the AFL-CIO

paid for a flight of radio advertisements entitled "Block" aimed at pressuring the Senate to approve the Norwood-Dingell version of the Patient's Bill of Rights, rather than the weaker version approved by the Senate in 1999. A copy of the script for this advertisement is attached as Exhibit 137 (AFL-CIO 16727). "Block" targeted seven Republican Senators who had consistently voted not to allow a vote on this legislation. The advertisement urged listeners to "call Senator XXX. Tell him to stop covering for the insurance industry and pass a real patient protection law. Tell him we're waiting." In August and September, with the bill still stalled in conference, we ran several flights of television advertisements entitled "Help" targeting Republican Representatives who had voted against the Patient's Bill of Rights when it passed the House in October, 1999, urging viewers to contact each of these Members and 'tell him he's on the wrong side." A copy of the script for this advertisement is attached as Exhibit 138 (AFL-CIO 6161). One of the flights of "Help" ran between August 18 and September 6, 2000; three Members targeted in this flight coincidentally were involved in primary elections within 30 days after the ads ran in media markets serving their congressional districts, as shown on Exhibit 1. Additional flights of "Help," targeting seven different Members, ran between September 7 and 15, September 25 and October 1, and October 9 and 16, all within 60 days of the general election to be held on November 7, 2000. The Members named in these advertisements are listed in Exhibit 1.

59. During July and August, 2000, the AFL-CIO ran television advertisements entitled "Sky" and "Protect" naming approximately twelve different Representatives who had voted at the end of June to pass prescription drug legislation that failed to guarantee drug benefits [31] under

Medicare. Copies of the scripts are attached as Exhibits 139 (AFL-CIO 6030) and 140 (AFL-CIO 6029). Four of these flights ran within 30 days of a primary election involving the Member named in the advertisement, as set forth in Exhibit 1.

60. During my deposition in this case on September 18, 2002, I was shown an AFL-CIO advertisement on the subject of prescription drugs naming Rep. Don Sherwood (R-PA). Although it was not identified as such in the exhibit shown to me, I believe that the advertisement was one of the flight of ads entitled "Sky." The records show that the advertisement was run between July 18 and 24 and August 2 and 8, 2000.

61. Between September 13 and 25, 2000, the AFL-CIO ran television advertisements entitled "Job" naming 14 Members of Congress who had voted to prevent an important OSHA regulation intended to prevent repetitive motion injuries from being implemented. President Clinton had threatened to veto the Labor-HHS budget bill if it retained the rider removing the regulation and the House Republican leadership agreed to a compromise and then backed out in October 2000. A copy of the script is attached as Exhibit 141 (AFL-CIO 16971), and additional materials produced by my office related to these advertisements are attached as Exhibits 142 (AFL-CIO 16972-16977) and 143 (AFL-CIO 16970). As shown on Exhibit 1, all of these advertisements ran on television within 60 days of the general election to be held on November 7, 2000.

62. During the 2000 Presidential campaign, after then-Governor Bush announced his proposal to privatize Social Security, which the AFL-CIO strongly opposes, the

AFL-CIO ran advertisements labeled "Teacher" addressing the proposal. A copy of the script is attached as Exhibit 144 (AFL-CIO 6143), and additional materials produced by my office related to these advertisements are attached as Exhibits 145 (AFL-CIO 6144-6146) and 146 (AFL-CIO 20113). [32] The AFL-CIO also ran a flight of ads labeled "Debate" following Governor Bush's erroneous claim during one of the debates that he had brought people together to pass a Patient's Bill of Rights in Texas. A copy of the script is attached as Exhibit 147 (AFL-CIO 6010).

63. In 2000, in order to educate the voters in Michigan concerning the positions of Senator Spencer Abraham (R-MI), a candidate for re-election, and to influence the positions he took in the campaign, the AFL-CIO ran an ad entitled "Who" highlighting his positions on minimum wage, overtime pay and workplace safety standards. The advertisement ran from October 16 to 22, 2000. A copy of the script is attached as Exhibit 148 (AFL-CIO 20177).

64. Table 10 in Volume 1 of the Appendix to the Expert Report of Kenneth L. Goldstein purports to report the number of airings of AFL-CIO advertisements (television and cable) in specific congressional districts in 2000. I am not able to verify the number of airings reported without additional information about the specific ads reported by Prof. Goldstein because, as set forth in Table 15, the titles of the ads he reported on are different from the titles in our records. However, I have reason to doubt the accuracy and completeness of the information in Table 10. First, Table 10 indicates AFL-CIO advertisements in five Congressional Districts for which our records show no airings during 2000: FL-23, MI-04, MN-06, PA-4 and SC-01. Second, our records also show AFL-CIO ads as having run during 2000 in

a large number of districts not listed in Table 10: CA-20, CA-27, CA-36, CO-1, FL-02, FL-05, FL-15, IN-05, IN-08, KY-01, MA-05, MA-07, ME-01, ME-01, MI-07, MN-01, MO-07, NY-09, NY-29, NM-02, NC-01, NC-09, OH-16, PA-05, PA-11, PA-15, TX-14, TX-16, WI-03 and WI-04. While, as I have previously indicated, our records of when and where AFL-CIO advertisements were run are not perfect, the number of these discrepancies is substantial.

65. Table 11 in Volume 1 of the Appendix to Prof. Goldstein's Expert Report also [33] reports that the AFL-CIO ran ads referring to only one Senate candidate in 2000. Table 14 identifies this as an advertisement mentioning Spencer Abraham that ran between October 16 and 22, 2000. However, our records indicate other 2000 ads that mentioned the name of a candidate for Senate including John Ashcroft (R-MO) and Rod Grams (R-MN). Also, this does not include several radio ads naming Senate candidates, which I understand were not available in Prof. Goldstein's data base.

66. Table 17D in Volume 1 of the Appendix to Prof. Goldstein's Expert Report purports to report the number of airings of all of the advertisements run by the AFL-CIO in 2000 according to the week the ads aired. As noted previously, I am not able to verify the airings reported without further information regarding the advertisements included. However, several observations about Table 17D are still possible:

a. Table 17D reports a number of airings (508) during the week ending February 28, 2000 and indicates that these ads did not mention a candidate by name. Our records indicate that the ad "Label" ran on television

during this period in 11 Congressional Districts and three states and that a Representative or Senator was mentioned by name in each ad. To my knowledge, all but one of these Representatives or Senators (Senator Kerry (D) of Massachusetts) were candidates for re-election in the November 2000 general election, and at least one of the Representatives mentioned in a "Label" advertisement was a candidate in a primary election within 30 days after the ad was run.

b. Table 17D also reports airings of AFL-CIO ads in the weeks ending April 10 (101), April 17 (294), April 24 (168), and May 1 (197) and identifies each of these ads as "no candidate mentioned." Our records indicate that one or both of the advertisements entitled "Endure" and "Trust" ran on television during these periods in 16 congressional districts and that [34] most, if not all, of these ads mentioned by name a Representative who was a candidate in the general election.

c. Table 17D shows no AFL-CIO ads as having been aired in the weeks ending May 8, May 15, May 22, May 29, June 5, June 12, June 19, June 26, July 3, and July 17. Our records show that the ads entitled "Endure" and "Trust" ran on television from May 11 to May 17, 2000. In addition, the ads entitled "Stand" and "Block" ran on radio from June 2 to June 8 or June 29 to July 6, respectively. Each of these advertisements mentioned a candidate by name.

67. In 2001, shortly before President Bush's tax plan was to be considered in the Senate, the AFL-CIO provided financial and production support to a flight of radio advertisements run by the Fair Taxes for All Coalition. These advertisements, entitled "Bank," ran in approximately

six states urging individual Senators "to fight for a tax cut, but one that makes sense - a tax cut for working families that won't break the bank." A copy of the script is attached as Exhibit 149 (AFL-CIO 20186) to this Declaration, and additional materials produced by my office related to these advertisements are attached as Exhibits 150 (AFL-CIO 20144) and 151 (AFL-CIO 18803-18807). The Senators targeted by these advertisements were all Democrats because the Coalition believed they would be key swing votes.

68. In November 2001, the AFL-CIO ran television advertisements entitled "Afford" targeting 17 Republican and Democratic Senators whose votes were regarded as crucial in passing an economic stimulus bill supported by organized labor. The advertisement urged viewers to call their Senator at a particular 800 number and stated, "The U.S. House just passed billions in tax rebates for big corporations … while leaving laid off workers to struggle. Now it's up to Senator X to change the plan." A copy of the script for this advertisement is attached [35] as Exhibit 152 (AFL-CIO 18810). After the Senate voted on November 14, 2001 not to bring up the AFL-CIO supported package, the AFL-CIO ran television advertisements entitled "Call" in two states criticizing the Senators for their votes and urging them to change his/her position. A copy of the script for this advertisement is attached as Exhibit 153 (AFL-CIO 20183).

69. After President Bush announced his intention to seek fast track trade authority of the kind opposed by the AFL-CIO in previous years and with a vote pending in the House, the AFL-CIO ran a flight of television advertisements entitled "Track," which urged 21 named Representatives "to vote no on fast track so he can fight for trade deals that work

for us." A copy of the script for this advertisement is attached as Exhibit 154 (18802), and additional materials produced by my office related to these advertisements are attached as Exhibits 155 (AFL-CIO 20162-20165). These ads ran between July 25-29, 2001 and named Members who were viewed as potential "no" votes on fast track legislation. In the fall of 2001, when the Republican leadership brought its fast-track legislation back up for a vote in the House, the AFL-CIO sponsored additional flights of television advertisements entitled "Now" that ran October 21-November 7 and December 2-5. A copy of the script for this advertisement is attached as Exhibit 156 (20203), and additional materials produced by my office related to these advertisements are attached as Exhibits 157 (AFL-CIO 20168) and 158 (AFL-CIO 20170). The ads ran in media markets serving 24 congressional districts served by Representatives who were specifically named in these ads. Sixteen of the Members named were Democrats. The advertisement urged the viewers to "call Congressman X and Tell Congressman X to vote no on Fast Track."

Conclusion

70. [36] In conclusion, I would like to make a comment about the potential effect of the BCRA's prohibition on "electioneering communications." During the debates on the BCRA, I saw numerous statements from supporters of the bill about the need to regulate "so-called" or "sham" issue ads, by which I understood them to mean that all or most issue advertisements by the AFL-CIO and other groups were intended solely or in reality to influence the outcome of federal elections. I realize that AFL-CIO advertising could affect how citizens vote. If our advertisements succeed in educating the public about

working families issues, and influence the actions, votes, positions and policy commitments of legislators and candidates, they may in some cases have an indirect effect on election outcomes, just as virtually every legislative and other activity undertaken by the AFL-CIO on behalf of workers that is conveyed to the public may have such an effect. This, however, has never been the point of our broadcast advertising program, within or outside the 30- and 60-day periods. As permitted under the law, the AFL-CIO runs an aggressive political action program through its Political Department that seeks to register union members and their families to vote and encourages them to vote for candidates endorsed by the labor movement. This partisan program focuses on grassroots mobilization activities that have proven over the years to be highly effective. These efforts rely on issues and partisan messages that, based on experience, tend to motivate union households and working families to vote. They do not necessarily focus on the same broad, national policy issues featured in our pubic advertising program because the broader issues do not necessarily resonate with voters in the same way. To the extent that the BCRA will prohibit the AFL-CIO from carrying out the kinds of programs described in this Declaration in the future, it is the public in general and working families in particular who will suffer the consequences.

[37] I declare under the penalty of perjury that the foregoing is true and correct.
Executed this 4th day of October, 2002.

/s/
Denise Mitchell